

EXHIBIT O

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1	UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI	
2		
3	MISSOURI STATE CONFERENCE OF)	
4	THE NATIONAL ASSOCIATION FOR)	
5	THE ADVANCEMENT OF COLORED)	
6	PEOPLE, REDDIT HUDSON,)	
7	F. WILLIS JOHNSON and)	
8	DORIS BAILEY,)	
9	Plaintiffs,)	
10)	
11	vs.) CASE NO. 14-2077	
12)	
13	FERGUSON-FLORISSANT SCHOOL)	
14	DISTRICT and ST. LOUIS COUNTY)	
15	BOARD OF ELECTIONS)	
16	COMMISSIONERS,)	
17)	
18	Defendants.)	
19		
20	Deposition of DAVID KIMBALL, produced, sworn and	
21	examined on the 21st day of August, 2015, between the	
22	hours of one-thirty in the afternoon and four-thirty in	
23	the afternoon of that day in the Crotzer & Ormsby, 130	
24	South Bemiston Avenue, Suite 602, in the County of St.	
25	Louis, State of Missouri, before Sandra McGraw, CCR	
	#614, in a certain cause now pending in the United	
	States District Court for the Eastern District of	
	Missouri, MISSOURI STATE CONFERENCE OF THE NATIONAL	
	ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,	
	REDDIT HUDSON, F. WILLIS JOHNSON, and DORIS BAILEY,	
	Plaintiffs, vs. FERGUSON-FLORISSANT SCHOOL, et al.,	
	Defendants; on behalf of the Defendants.	

<p style="text-align: right;">Page 5</p> <p>1 DAVID KIMBALL, 2 of lawful age, being duly sworn to tell the truth, the 3 whole truth, and nothing but the truth, deposes and 4 says on behalf of the Defendant as follows: 5 DIRECT EXAMINATION 6 BY MS. ORMSBY: 7 Q. Good afternoon, Dr. Kimball. 8 A. Hi. 9 Q. I'm Cindy Ormsby. I'm one of the attorneys 10 that represent the Defendants in this case. 11 Could you state your full name, please, for the 12 record. 13 A. David Cunningham Kimball. 14 Q. Okay. And do you live in St. Louis? 15 A. Yes. Webster Groves. 16 Q. Okay. Have you ever had your deposition taken 17 before? 18 A. No. 19 Q. All right. So I'll go through some ground 20 rules. I'm sure your attorneys have already talked to 21 you about it but I'll tell you again. 22 So if you could answer -- wait for me to finish my 23 question before you start your answer, and I will try 24 to wait for you to answer your -- finish your answer 25 before I ask my next question. And it's because the</p>	<p style="text-align: right;">Page 7</p> <p>1 Q. Have you read any of the reports written by 2 the other Plaintiffs' experts in this case? 3 A. No, I have not. 4 Q. Okay. And have you spoken to anyone other 5 than the attorneys regarding this case? 6 A. No. 7 Q. Okay. Can we just get a little bit of 8 education background? Can you tell me where you 9 graduated from high school? 10 A. John Burroughs High School. 11 Q. Oh, here in St. Louis. Okay. 12 And where did you go to undergrad? 13 A. Brown University. 14 Q. Okay. And what year did you graduate from 15 Brown? 16 A. 1989. 17 Q. Okay. And what was your degree in? 18 A. Political science and applied mathematics. 19 Q. Okay. I'll let you take a drink. 20 A. Thanks. 21 Q. I forgot to say one other thing. If you need 22 a break at any time, just speak up. 23 A. Okay. 24 Q. And as long as you just answer the question 25 that's on the table before, just let me know.</p>
<p style="text-align: right;">Page 6</p> <p>1 court reporter is taking everything down and she can't 2 type when two people are talking. Is that okay? 3 A. Yes. Uh-huh. 4 Q. And could you answer verbally like you just 5 did instead of shaking your head and nodding your head? 6 A. Yes. 7 Q. Because also gestures are difficult to type 8 down. 9 A. Right. 10 Q. And if I ask a question that you don't 11 understand, which is likely, my words get jumbled every 12 once in a while, please ask me to rephrase the question 13 if you don't understand it. If you answer the 14 question, I'm going to assume you understood it. 15 A. Okay. 16 Q. Is that fair? 17 Q. Okay. What have you done to prepare for this 18 deposition? 19 A. I read my reports, and I read the first report 20 from Dr. Rodden, and the rebuttal report from 21 Dr. Rodden, and I've had conversations with Julie and 22 Sophia. 23 Q. Okay. Have you spoken to any of the other 24 experts in this case? 25 A. No.</p>	<p style="text-align: right;">Page 8</p> <p>1 All right. So you graduated from Brown when? I'm 2 sorry. 3 A. 1989. 4 Q. Okay. And then did you go directly to grad 5 school? 6 A. No. 7 Q. What did you after? 8 A. I worked at the Environmental Protection 9 Agency. 10 Q. Where was that? 11 A. In Washington, D.C. 12 Q. Okay. How long did you work there? 13 A. About three years. 14 Q. Okay. And at that point did you go to grad 15 school? 16 A. Then I went to grad school. 17 Q. Where did you attend grad school? 18 A. Ohio State University. 19 Q. Okay. And were you there until you got your 20 doctorate, your Ph.D.? 21 A. Yeah. 22 Q. Okay. And what -- when did you get -- when 23 did you graduate or get your Ph.D.? 24 A. In 1997. 25 Q. And then did you get your first professional</p>

<p style="text-align: right;">Page 9</p> <p>1 job upon receiving your doctorate? Did you have a 2 postdoc or what did you do next?</p> <p>3 A. Then I got -- my first job was at Southern 4 Illinois University Carbondale.</p> <p>5 Q. Okay. All right. And were you a professor 6 there?</p> <p>7 A. Uh-huh.</p> <p>8 Q. Okay.</p> <p>9 A. Assistant professor.</p> <p>10 Q. And how long were you there?</p> <p>11 A. I was there three years.</p> <p>12 Q. Okay. And you went from Southern Illinois 13 University to where?</p> <p>14 A. To UMSL.</p> <p>15 Q. Okay. And you've been there since?</p> <p>16 A. Yeah.</p> <p>17 Q. So what year did you begin at UMSL?</p> <p>18 A. 2001.</p> <p>19 Q. Okay. Okay. How many VRA cases have you been 20 involved with?</p> <p>21 A. Five or six.</p> <p>22 Q. Okay. And have you testified as an expert 23 witness in those cases?</p> <p>24 A. I've testified as a witness in two 25 redistricting cases, yeah.</p>	<p style="text-align: right;">Page 11</p> <p>1 probably ACLU would be Brunner, I guess. I'm not sure 2 I have the names right on that.</p> <p>3 Q. Okay. And you testified as an expert witness 4 in these cases but you've never had your deposition 5 taken?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. So how many of the cases that you 8 either testified or provided expert reports in did you 9 work for the ACLU?</p> <p>10 A. That would be the 2012 case in Ohio and the 11 2008 case in Ohio.</p> <p>12 Q. 2008 and 2003 -- oh, no. 2006?</p> <p>13 A. It was either 2006 or 2008 in Ohio. I can't 14 remember the year exactly.</p> <p>15 Q. And then 2012?</p> <p>16 A. Right.</p> <p>17 Q. Okay. Have you ever been an expert witness on 18 behalf of the NAACP?</p> <p>19 A. No, I think this is the first.</p> <p>20 Q. And in all of these cases did you testify on 21 behalf of the plaintiffs?</p> <p>22 A. I think that's right.</p> <p>23 Q. And are you -- other than this case are you 24 involved in any other VR cases -- VRA cases currently?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 10</p> <p>1 Q. Okay. Were these VRA cases involving 2 Section 2 of the VRA?</p> <p>3 A. I guess -- the Missouri redistricting case I 4 don't think -- I don't think involved any voting rights 5 issues, not a Section 2. But the county council 6 redistricting case, I think there was some voting 7 rights, Section 2 discussion to it.</p> <p>8 Q. Okay. So what are the five cases that you've 9 been involved in?</p> <p>10 A. Let's see, working backward, the St. Louis 11 County Council case was the Stenger v. Kellett, I 12 think. The Missouri redistricting case, something like 13 Pearson v. Koster maybe. I'm not sure if I have the 14 names right on that one.</p> <p>15 Then there was, let's see, there was a provisional 16 voting case in Ohio in 2012. John Husted is the 17 defendant and it was either ACLU or NEOCH versus 18 Husted. NEOCH, that was the acronym for the other, 19 Northeast Ohio Coalition for the Homeless, I think.</p> <p>20 Let me think. There was a 2003 case in New York. 21 New York -- State of New York. Brennan Center v. -- I 22 can't remember who the defendant was.</p> <p>23 And then in 2006 or 2008 a case in Ohio.</p> <p>24 Q. Okay.</p> <p>25 A. Brunner was the defendant and that was --</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. And have you previously worked on any cases in 2 Missouri? So I heard the St. Louis County case, right?</p> <p>3 A. Right. That was in the -- in the Missouri 4 redistricting -- congressional redistricting case.</p> <p>5 Both of those were in 2012.</p> <p>6 Q. And have you ever worked specifically with 7 Plaintiffs' attorneys prior to this case?</p> <p>8 A. With Julie and Sophia?</p> <p>9 Q. Uh-huh.</p> <p>10 A. No.</p> <p>11 Q. And who initially contacted you with regard to 12 this case?</p> <p>13 A. I think Julie did.</p> <p>14 Q. Do you remember when?</p> <p>15 A. Several months ago. Around the beginning of 16 the year I think. Yeah, around the first of the year.</p> <p>17 Q. Okay.</p> <p>18 A. I can't -- I can't remember exactly what date.</p> <p>19 Q. Okay. And what's your hourly rate on this 20 case?</p> <p>21 A. A hundred dollars.</p> <p>22 Q. And have you submitted invoices to the ACLU?</p> <p>23 A. I think I've submitted two so far.</p> <p>24 Q. And do you submit them directly to the ACLU?</p> <p>25 A. Right. I think I mailed them to Julie.</p>

<p style="text-align: right;">Page 13</p> <p>1 Q. And do you know approximately how many hours 2 you've billed on this case so far? 3 A. Maybe thirty hours roughly. I'm not -- I'm 4 not certain. 5 Q. Okay. And has anyone assisted you in any 6 manner in this case? 7 A. No, I don't think so. 8 Q. And what do you understand your role to be in 9 this case? 10 A. As an expert to provide a report on the 11 Ferguson-Florissant School District elections. 12 Q. Are you an expert in the VRA? 13 A. Yes. I mean, that was part of my -- part of 14 my analysis. 15 Q. And why do you believe you're an expert? 16 A. I've done some previous research on voting and 17 elections and issues relating to the Voting Rights Act. 18 Q. You attached a copy of your CV to your initial 19 report, correct? 20 A. Yes. 21 Q. Can you -- can you define what a refereed 22 article is? 23 A. That's an article that's gone through a 24 peer-review process before it's published. Typically 25 two or three other scholars read it. And if they</p>	<p style="text-align: right;">Page 15</p> <p>1 A. Yes. 2 Q. Can you tell me what it means when your work 3 gets cited? 4 A. That means another published study mentions 5 your study in their paper or book. 6 Q. And is that a good thing, for a political 7 scientist to be cited? 8 A. Right. Yeah, it's a good thing. 9 Q. Okay. Do you know approximately how many 10 citations you have? 11 A. Oh, I don't have a good -- a couple hundred. 12 I haven't -- I haven't had to check up on it in a 13 while. I think, yeah, several hundred but I don't know 14 specifically. 15 Q. Well, we actually checked for you. 16 A. Okay. 17 Q. So would you be surprised to know it was about 18 fifteen hundred? 19 A. Fifteen hundred? Didn't know it was that 20 high. Okay. 21 Q. So would you -- approximately. Give or take. 22 A. Okay. 23 Q. So would you consider a political scientist 24 that has been published that many or more, say up to 25 twenty-five hundred times, to be fairly accomplished?</p>
<p style="text-align: right;">Page 14</p> <p>1 support publishing it, then it usually gets published. 2 And if they oppose publishing it, then it doesn't get 3 published. 4 Q. And is that the same definition for a refereed 5 book? 6 A. Yes. 7 Q. What would you consider to be a high level 8 journal for publication in political science? 9 A. There are -- there are lots of journals in 10 political science. The -- yeah, I guess there are 11 several high level journals. American Political 12 Science Review, Journal of Politics, American Journal 13 of Political Science, Public Opinion Quarterly, 14 Political Research Quarterly. 15 Q. Okay. And have you been published in any of 16 those journals? 17 A. Most of those. Not all of them. 18 Q. So would you say that if you are -- if you 19 publish an article -- and all of those are peer-reviewed 20 journals, correct? 21 A. Right. The ones I mentioned, yes. 22 Q. And would you say that if you've been 23 published in one of those journals, that you've reached 24 a fairly high level of attainment within the political 25 science field?</p>	<p style="text-align: right;">Page 16</p> <p>1 A. Uh-huh. Yes. 2 Q. I'm going to enter Exhibits R and S. 3 (Defendant's Exhibit R was marked for 4 identification.) 5 Q. (By Ms. Ormsby) Can you look at those and can 6 you identify those as the reports that you filed in 7 this case? 8 Here's the second one. Sorry. 9 (Discussion held off the record.) 10 Q. (By Ms. Ormsby) Now, there you go. Do you 11 recognize those as the reports that you filed in this 12 case? 13 A. Yes. 14 Q. Okay. 15 As part of your assessment on Senate Factor 2, did 16 the Plaintiffs' attorney ask you to examine for the 17 court whether voting was racially polarized in the 18 Ferguson-Florissant School District? 19 A. I don't think they asked me to do it directly. 20 This was something that I had done on my own before 21 they had contacted me, or I started to do before they 22 contacted me. The analysis of the 2014 election. 23 Q. And you did this by examining the correlation 24 at the level of precincts between the combined votes of 25 a group of African-American candidates and the percent</p>

<p style="text-align: right;">Page 17</p> <p>1 of the voting age population that was African American; 2 is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. And did you believe this was a good way of 5 establishing whether voting was racially polarized?</p> <p>6 A. It's one of -- one of three different 7 approaches that are commonly used to examine racially 8 polarized voting.</p> <p>9 Q. What are the other two approaches?</p> <p>10 A. So, I mean, the graph, I would consider this 11 ecological regression. And the other two are 12 homogeneous precinct analysis, and ecological inference 13 is the third.</p> <p>14 Q. And which of those three are the most 15 generally accepted methods for political scientists?</p> <p>16 A. I don't know that there's one that's 17 preferred. I think it's useful to use two or three of 18 them in conjunction with each other.</p> <p>19 Q. Okay. I don't want to cut you off so.</p> <p>20 A. Yeah.</p> <p>21 Q. Okay. And you decided to make your 22 determination on whether or not voting was racially 23 polarized based solely on the election in 2014; is that 24 correct?</p> <p>25 A. For this report.</p>	<p style="text-align: right;">Page 19</p> <p>1 for 2014, but he also included a scatter plot for the 2 other three most recent elections; is that right?</p> <p>3 A. It's a similar analysis to what I did. Not 4 exactly the same.</p> <p>5 In my analysis of 2014, I just examined the three 6 candidates, the three African-American candidates, who 7 ran jointly under the same banner. And Rodden, I 8 think, examined all African-American candidates in each 9 election.</p> <p>10 The other differences in my report, I weighted the 11 precincts by how many voters there were in each 12 precinct. And it appears to me that Rodden didn't do 13 that in his analysis.</p> <p>14 Q. But you admit that Dr. Rodden provided 15 information on the other three most recent --</p> <p>16 A. Yes.</p> <p>17 Q. -- elections?</p> <p>18 A. Yes.</p> <p>19 Q. But you didn't believe that the court would 20 find that information useful?</p> <p>21 A. I didn't -- I didn't consider -- I didn't 22 think about that question when I wrote my report.</p> <p>23 Q. Okay. Were you aware at the time that you 24 wrote your report that 2014 was an outlier compared to 25 the other three elections? That the correlation</p>
<p style="text-align: right;">Page 18</p> <p>1 Q. Okay.</p> <p>2 A. Correct.</p> <p>3 Q. And was there precinct level data available 4 for other recent school board elections, such as in 5 2012, 2013, and 2015?</p> <p>6 A. There was precinct data available, yes.</p> <p>7 Q. Why did you decide to limit your analysis to 8 only 2014?</p> <p>9 A. At this point I was interested in seeing 10 whether there was evidence of racially polarized 11 voting. And since I found it in 2014, I thought that 12 was -- I thought that was sufficient for this report.</p> <p>13 Q. What about the 2015 election which occurred 14 after that election, you didn't look at that?</p> <p>15 A. Not in this report. I did in the rebuttal 16 report.</p> <p>17 Q. I'm going to -- (Discussion held off the record.)</p> <p>18 Q. (By Ms. Ormsby) Okay. Sir, I've handed you 19 Dr. Rodden's initial report; is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. And you reviewed that prior?</p> <p>22 A. Yes.</p> <p>23 Q. Could you turn to page 20 of that report. 24 And Dr. Rodden did the same analysis that you did</p>	<p style="text-align: right;">Page 20</p> <p>1 between the African-American share of VAP and the vote 2 shares of African-American candidates was far higher in 3 2014 than in any other recent election?</p> <p>4 A. When I wrote my first report I didn't analyze 5 that question, so I didn't know what the correlations 6 were for the other -- for the other elections.</p> <p>7 Q. Do you have any reason to doubt the data in 8 Figure 7 of Dr. Rodden's report?</p> <p>9 A. No.</p> <p>10 Q. And would you agree that the lines in Figure 7 11 are much flatter for the other three elections, other 12 than 2014?</p> <p>13 A. The blue curves are flatter.</p> <p>14 Q. Do you believe that 2015 was a racially 15 polarized election?</p> <p>16 A. I do.</p> <p>17 Q. And now if you look at Dr. Rodden's graph, it 18 looks like the precincts with around twenty percent 19 African-American VAP gave about fifty percent of their 20 votes to African-American candidates; is that correct?</p> <p>21 A. Roughly, yeah.</p> <p>22 Q. And it looks like precincts with eighty 23 percent African-American VAP gave about sixty percent 24 of their votes to African-American candidates; is that 25 right?</p>

<p style="text-align: right;">Page 21</p> <p>1 A. Approximately, yes.</p> <p>2 Q. And between twenty and eighty percent of</p> <p>3 African-American VAP, that line is basically flat</p> <p>4 between twenty and eighty percent?</p> <p>5 A. Or slightly upwardly sloping.</p> <p>6 Q. And you call that a polarized election?</p> <p>7 A. Yes. And 2012 and 2013 as well. I mean,</p> <p>8 these graphs aren't the only way to analyze voting</p> <p>9 behavior in elections.</p> <p>10 In each of the four elections depicted there, the</p> <p>11 top choice among white voters was different than the</p> <p>12 top choice among African-American voters. And in each</p> <p>13 of those elections the top choice among white voters</p> <p>14 won, but the top choice among black voters didn't win</p> <p>15 in each of those elections.</p> <p>16 Q. But looking just at those graphs, which is</p> <p>17 similar to the graph that you provided as evidence</p> <p>18 in --</p> <p>19 A. Uh-huh.</p> <p>20 Q. -- your report, would you say just looking at</p> <p>21 that graph that it appears that there's racial</p> <p>22 polarization without considering the other factors that</p> <p>23 you mentioned?</p> <p>24 A. I guess I wouldn't be comfortable in answering</p> <p>25 that question just based on the graph. I'd prefer</p>	<p style="text-align: right;">Page 23</p> <p>1 provide me with the information that Dr. Rodden</p> <p>2 included in his report, stating that he analyzed all of</p> <p>3 the African-American candidates, not just the three in</p> <p>4 the coalition that were in 2014.</p> <p>5 Q. (By Ms. Ormsby) And my question is simple.</p> <p>6 Based on those maps as they are in Dr. Rodden's report,</p> <p>7 whether they're right or wrong, would you say that that</p> <p>8 depicts racial polarization?</p> <p>9 A. I think it's -- I would rather see more</p> <p>10 evidence in additional measures to make a conclusion</p> <p>11 about racial polarized voting than just looking at one</p> <p>12 graph.</p> <p>13 Q. I understand that. I understand that you did</p> <p>14 that. But this is one facet of racial polarization; is</p> <p>15 that right? You included that map in your report. You</p> <p>16 believe it to be --</p> <p>17 A. -- A similar figure.</p> <p>18 Q. Yeah. You believe it to be relevant to the</p> <p>19 court, that -- those sorts of graphs. And I'm asking</p> <p>20 you whether the background data is, right or wrong,</p> <p>21 whether those maps as they are sitting there in front</p> <p>22 of you, whether those indicate racial polarization in</p> <p>23 2012, '13 and '15.</p> <p>24 A. I guess I would say my same answer. I'd</p> <p>25 prefer to look at more evidence or additional measures</p>
<p style="text-align: right;">Page 22</p> <p>1 using at least a couple of the different approaches to</p> <p>2 study racially polarized voting to make a conclusion.</p> <p>3 Q. But you used a graph just like that to</p> <p>4 demonstrate racially polarized voting in your report;</p> <p>5 is that right?</p> <p>6 A. I did but I also did the homogeneous precincts</p> <p>7 analysis in my report as well.</p> <p>8 Q. And Dr. Rodden did further analysis as well</p> <p>9 too, correct? But this is just one aspect of his</p> <p>10 report that you both included to some degree, correct?</p> <p>11 A. Included in some degree, yes.</p> <p>12 Q. And I'm asking you to just make -- give me an</p> <p>13 opinion based on this particular evidence in this</p> <p>14 particular portion of both of your report -- of the</p> <p>15 report to indicate whether or not those graphs indicate</p> <p>16 racial polarization.</p> <p>17 MS. EBENSTEIN: I'm sorry, Cindy. I'm going</p> <p>18 to object. If you could provide him with a background</p> <p>19 data of those graphs so that -- if you'd like him to</p> <p>20 review that data, the data was not provided by</p> <p>21 Dr. Rodden in his report. For completeness the data</p> <p>22 should be provided if you'd like him to interpret it</p> <p>23 for the first time.</p> <p>24 MS. ORMSBY: First of all, it's not the first</p> <p>25 time. He's had these reports and he seemed to already</p>	<p style="text-align: right;">Page 24</p> <p>1 to make a conclusion about racially polarized voting in</p> <p>2 addition to just the one figure.</p> <p>3 Q. So you don't know based on looking at those</p> <p>4 maps, those graphs?</p> <p>5 A. Right. I wouldn't make a judgment just based</p> <p>6 on the figures.</p> <p>7 Q. But would you agree with me that you would</p> <p>8 like the court to conclude that there is racial</p> <p>9 polarization based on your map that you provided for</p> <p>10 2014?</p> <p>11 A. Based on the analysis I did for 2014, I</p> <p>12 concluded there was racially polarized voting.</p> <p>13 Q. So can the court ignore your graph and just</p> <p>14 look at your other data? Because you put your graph in</p> <p>15 your map -- in your report to show the court that</p> <p>16 there's racial polarization, right? Isn't that the</p> <p>17 purpose of the map?</p> <p>18 A. That was part of the evidence I provided. I</p> <p>19 also provided the homogeneous precinct estimates and</p> <p>20 the ecological regression estimate.</p> <p>21 Q. And we're going to talk about those thoroughly</p> <p>22 in a few minutes. I'm just wondering why the map was</p> <p>23 included if it's not a definitive indicator.</p> <p>24 A. Well, I included it as part of the evidence.</p> <p>25 Q. All right. So let's go to your homogenous</p>

<p style="text-align: right;">Page 25</p> <p>1 precinct analysis.</p> <p>2 But your initial report where you only included</p> <p>3 2014, you didn't believe the context of the elections</p> <p>4 that took place in '12, '13, and '15 were relevant to</p> <p>5 the court's analysis?</p> <p>6 A. I didn't consider other -- including other</p> <p>7 elections at that time.</p> <p>8 Q. Even though there was a more current election</p> <p>9 available to you?</p> <p>10 A. Yeah, I guess that's right. My first report</p> <p>11 was in May and the 2015 election was in April.</p> <p>12 Q. All right. Let's go to your homogeneous</p> <p>13 precinct analysis. In addition to those scatter plots</p> <p>14 connecting the race of the candidates and the race of</p> <p>15 the voters, you conducted homogeneous precinct analysis</p> <p>16 for the 2014 election only in your initial report; is</p> <p>17 that right?</p> <p>18 A. Right.</p> <p>19 Q. And you contrasted the success of black and</p> <p>20 white candidates in different types of precincts; is</p> <p>21 that right?</p> <p>22 A. Right.</p> <p>23 Q. How would you define homogeneous precinct</p> <p>24 analysis?</p> <p>25 A. It means comparing precincts that are heavily</p>	<p style="text-align: right;">Page 27</p> <p>1 precincts and leaving out -- leaving out other data.</p> <p>2 Q. Actually a lot of data, right?</p> <p>3 A. In some cases, yes.</p> <p>4 Q. In this case?</p> <p>5 A. In this case I think the homogeneous precincts</p> <p>6 were what, maybe a quarter of -- quarter to a third of</p> <p>7 the precincts. So leaving out two thirds to three</p> <p>8 quarters of the precincts.</p> <p>9 Q. Okay. I'm going to give you Exhibit H --</p> <p>10 A. Can I just finish my --</p> <p>11 Q. Sure. I'm sorry.</p> <p>12 A. The advantage of the homogeneous precincts is</p> <p>13 that since you're only examining precincts that are</p> <p>14 heavily white or heavily African American, there's</p> <p>15 no -- you're much more certain about what those</p> <p>16 precincts say about the voting behavior of the people</p> <p>17 in those precincts so there's no inference or</p> <p>18 estimation involved.</p> <p>19 Q. Okay. I'm going to give you what's been</p> <p>20 previously marked as Defendant's Exhibit H. It's the</p> <p>21 expert report of Dr. Engstrom, another Plaintiffs'</p> <p>22 expert in this case. Your counsel may want you to take</p> <p>23 time to read the entire thing, but at this point I'm</p> <p>24 asking you to just refer to page 5, a footnote on</p> <p>25 page 5 of Dr. Engstrom's report. Could you read that</p>
<p style="text-align: right;">Page 26</p> <p>1 of one group against precincts that are heavily</p> <p>2 populated by another group.</p> <p>3 So in this case I was comparing precincts that</p> <p>4 were eighty percent or ninety percent African-American</p> <p>5 voting age population versus precincts that were less</p> <p>6 than twenty percent or less than ten percent</p> <p>7 African-American voting age population.</p> <p>8 Q. Would you say the majority of the political</p> <p>9 scientists in your field consider homogeneous precinct</p> <p>10 analysis to be as reliable as King's method? And I'm</p> <p>11 asking for political scientists as a whole, as a body.</p> <p>12 A. Political -- I think political scientists</p> <p>13 would consider both methods useful information for</p> <p>14 analysis.</p> <p>15 Q. What thesis did you -- what theory did your</p> <p>16 thesis rely on?</p> <p>17 A. My --</p> <p>18 Q. Doctoral thesis?</p> <p>19 A. I didn't -- how can I explain? I don't</p> <p>20 believe I used either of these methods in my doctoral</p> <p>21 thesis. In my first book I did. My first book I used</p> <p>22 the King ecological inference.</p> <p>23 Q. Why didn't you use HP?</p> <p>24 A. So the disadvantage of the homogeneous</p> <p>25 precincts is you're only examining some of the</p>	<p style="text-align: right;">Page 28</p> <p>1 out loud, please?</p> <p>2 A. The Footnote 4, this procedure?</p> <p>3 Q. Uh-huh.</p> <p>4 A. ***This procedure is detailed in Gary King, A</p> <p>5 Solution to the Ecological Inference Problem, colon,</p> <p>6 Reconstructing Individual Behavior From Aggregate Data,</p> <p>7 parentheses, Princeton University Press, 1997, close</p> <p>8 parentheses, and is now used widely by expert witnesses</p> <p>9 in assessing racially polarized voting in voting rights</p> <p>10 cases, period.</p> <p>11 On the superiority of EI over ecological</p> <p>12 regression for assessing differences in the candidate</p> <p>13 preferences between or among groups of voters, which</p> <p>14 had been relied upon by the Supreme Court in 1986 in</p> <p>15 Gingles, comma, 478 U.S. at 52 dash 53, see King, A</p> <p>16 Solution, at 15 dash 16. EI was developed subsequent</p> <p>17 to that case for the explicit purpose of improving</p> <p>18 these estimates.</p> <p>19 See also D. Stephen Voss, quote, Using Ecological</p> <p>20 Inference for Contextual Research, close quote, in Gary</p> <p>21 King, Ori Rosen, and Martin Tanner, editors, Ecological</p> <p>22 Inference, colon, New Methodological Strategies,</p> <p>23 parentheses, Cambridge University Press 2004, close</p> <p>24 parentheses, at 93, parentheses, EI, quote, is</p> <p>25 unparalleled when applied to the actual sort of data</p>

<p style="text-align: right;">Page 29</p> <p>1 needed for analyzing important social issues such as 2 racial voting patterns, close quote, close 3 parentheses.</p> <p>4 Q. So a fellow expert in this case on behalf of 5 the Plaintiffs', Dr. Engstrom, argues that -- or states 6 that ecological inference is recognized as superior; is 7 that right?</p> <p>8 A. Superior to ecological regression.</p> <p>9 Q. And homogeneous precinct, correct?</p> <p>10 A. He says it's widely used. He says it's 11 superior over ecological regression. I don't think he 12 mentioned homogeneous precincts in the footnote.</p> <p>13 MS. LAKIN: Also before he answers other 14 questions about this, I'd just like him to sort of flip 15 through, what, these pages 4 through 14.</p> <p>16 A. Four through fourteen.</p> <p>17 MS. ORMSBY: We can take time for him to read 18 the whole thing if you'd like.</p> <p>19 MS. EBENSTEIN: I don't think that's 20 necessary. But you've had him read a footnote. Maybe 21 he could see that footnote too. So at least that 22 paragraph that it footnotes.</p> <p>23 MS. ORMSBY: Absolutely.</p> <p>24 MS. EBENSTEIN: You said you only had 25 questions about the footnote?</p>	<p style="text-align: right;">Page 31</p> <p>1 ecological inference? 2 A. I guess I don't think about preferring one 3 over the other. I like to use them in conjunction. I 4 think the advantage of homogeneous precincts is you're 5 just examining the precincts that are quite homogeneous 6 and so there's -- you're more certain about underlying 7 voting behavior in those precincts. Obviously the 8 disadvantage is you're ignoring other precincts.</p> <p>9 The danger as I see it with both ecological 10 inference and ecological regression is they're still 11 estimates. You're not guaranteed of getting the truth. 12 And so it's useful, I think, to use several of these 13 methods in conjunction.</p> <p>14 Q. But to be clear, in your initial report you 15 didn't use any other analysis, did you?</p> <p>16 A. In my initial report I did ecological 17 regression and the homogeneous precincts.</p> <p>18 Q. You did ecological regression for your graph 19 for 2014; is that right?</p> <p>20 A. Well, that's just a graph. That's not -- it's 21 not -- the graph doesn't give you the estimate.</p> <p>22 Q. When you analyzed voting preferences of 23 minority and white candidates, you used only 24 homogeneous precinct analysis; is that right?</p> <p>25 A. In my initial report I used both ecological</p>
<p style="text-align: right;">Page 30</p> <p>1 MS. ORMSBY: Right now. I am going to refer 2 to some of Dr. Engstrom's tables later on with regard 3 to his homogeneous precinct analysis and ecological 4 inference.</p> <p>5 MS. EBENSTEIN: So just to be clear on --</p> <p>6 MS. ORMSBY: Tables 1 and 2 I will be 7 referring to later.</p> <p>8 MS. EBENSTEIN: So just to be clear on the 9 record, you're asking him to read or interpret 10 something that he hasn't seen before?</p> <p>11 MS. ORMSBY: I'm asking --</p> <p>12 MS. EBENSTEIN: If we are going to do that, 13 before he answers any questions about those tables 14 we're going to ask that he at least be able to review 15 the analysis.</p> <p>16 MS. ORMSBY: And of course that's acceptable 17 to me.</p> <p>18 A. Okay.</p> <p>19 Q. (By Ms. Ormsby) Okay. So you believe that 20 homogeneous precinct analysis to be as reliable as 21 using King's method of ecological inference?</p> <p>22 A. I think homogenous precincts is a useful 23 method to be used in conjunction with the other two.</p> <p>24 Q. What conditions need to be present in order 25 for homogeneous precinct analysis to be used over</p>	<p style="text-align: right;">Page 32</p> <p>1 regression and homogeneous precinct analysis.</p> <p>2 Q. Let's turn to your analysis. Let's -- could 3 you open your --</p> <p>4 A. My first report?</p> <p>5 Q. Uh-huh. Yes. Can you read -- turn to page 5. 6 And under the section titled Homogeneous Precinct 7 Analysis, could you read your first sentence?</p> <p>8 A. In precincts where the voting age population 9 is more than eighty percent African American, coalition 10 candidates received seventy-one percent of the votes 11 cast for FFSD School Board seats, eleven precincts.</p> <p>12 Q. What is the general cutoff generally for 13 homogeneous precinct standards?</p> <p>14 A. I don't think there's a unique cutoff. 15 Somewhere around eighty percent, eighty-five percent, 16 ninety percent is typically what analysts use, at least 17 that I'm familiar with.</p> <p>18 Q. Well, I'm going to ask you to look at 19 Professor Engstrom's report then again and turn to page 20 13, Footnote 9. And please feel free to read whatever 21 you want with regard to this footnote.</p> <p>22 But it states -- the first sentence states: HP 23 analysis are typically based on cutoffs of the ninety 24 percent and ten percent. But in this application 25 eighty-five percent and fifteen percent are employed</p>

<p style="text-align: right;">Page 33</p> <p>1 due to the small number of precincts that satisfy the 2 ninety percent and ten percent threshold. 3 Did I read that correctly? 4 A. Yes. 5 Q. So Dr. Engstrom states that typical HP 6 analysis involves a ninety/ten threshold; would that be 7 right? 8 A. That's what his first sentence seems to be 9 saying. 10 Q. Okay. And feel free to read the paragraph 11 that that's associated with, the remainder of that 12 footnote if you'd like. 13 Are you ready? 14 A. Okay. 15 Q. So Dr. Engstrom felt it was important to 16 reveal that he was using a lower threshold than what is 17 normal because he used an eighty-five/fifteen 18 threshold. Why didn't you disclose that you were using 19 an unusually low threshold? 20 A. Again, my view of homogeneous precincts is 21 that somewhere around an eighty percent to ninety 22 percent cutoff is what's usually done. So my 23 definition of typical is maybe a little bit different 24 than Engstrom's. 25 Q. Can you cite to any scholarly publications</p>	<p style="text-align: right;">Page 35</p> <p>1 analyses in my view produced similar estimates of what 2 the African-American voting behavior was in that 3 election and what the non-African-American voting 4 behavior was in that election. 5 Q. Doesn't Gary King state that -- and not only 6 Gary King but other political science methodologists 7 state that that's why we're better using ecological 8 inference analysis, so we can make optimal use of all 9 the information in all of the precincts? 10 A. The -- an advantage of ecological inference is 11 it uses all of the precincts. I guess in my view I 12 still like the homogeneous precinct analysis as well, 13 to use in conjunction with the other two methods, since 14 there's no estimation involved. 15 Q. But as you stated, you used it only in 16 conjunction with one other method, correct? 17 A. Right. With ecological regression. 18 Q. Now, in your rebuttal report you do some 19 additional homogeneous precinct analysis, right? 20 A. Yes. 21 Q. And if you want to get your rebuttal report, I 22 believe it's right there. 23 And you provide thoughts on why you believe 24 ecological inference analysis is inappropriate, 25 correct?</p>
<p style="text-align: right;">Page 34</p> <p>1 that would accept an eighty/twenty threshold in 2 conducting a homogeneous precinct analysis? 3 A. I don't know any -- I can't think of any 4 studies that say specifically what the cutoff should 5 be. 6 Q. Why did you change your threshold to 7 eighty/twenty? 8 A. I used both eighty/twenty and ninety/ten in my 9 initial report, so I don't think I was changing 10 anything. 11 Q. Do you inform the reader when you're using 12 eighty/twenty and when you're using ninety/ten? 13 A. Yes. 14 Q. In your initial report? 15 A. Yes. 16 Q. On page 5 you state that the only three 17 precincts -- that there were only three precincts that 18 were more than ninety percent African American and only 19 two were under ten percent; is that what you state? 20 A. Right. 21 Q. So are you saying that you don't really trust 22 the ninety/ten analysis because it would look to be 23 based on a ridiculously small number of precincts? 24 A. I just reported both numbers so that readers 25 could have both numbers to compare. Both sets of</p>	<p style="text-align: right;">Page 36</p> <p>1 A. Not inappropriate. I just said we should be 2 cautious in interpreting the results of ecological 3 inference. 4 Q. You suggest on page 4 that there are many 5 precincts in the school district with similar 6 proportions of black and white adults and that this 7 poses a challenge for ecological inference and 8 ecological regression estimates of the voting behavior 9 of whites and African Americans; is that what you 10 state? 11 A. Uh-huh. 12 Q. So if I'm understanding you correctly, you're 13 saying that a majority of the district is so racially 14 integrated that we can't learn much about the voting 15 choices of racial groups; is that what you're saying? 16 A. Many of the -- many of the precincts in the 17 district are integrated, which makes it more difficult 18 to infer the behavior of white voters versus the 19 behavior of black voters. 20 Q. So instead you need to seek out a smaller 21 number of blacks and whites who live in homogeneous 22 precincts to see if their behavior is different; is 23 that what you are doing? 24 A. I said it's good to compare the ecological 25 inference estimates to the homogeneous precincts</p>

<p style="text-align: right;">Page 37</p> <p>1 estimates. So I think it's useful to use both.</p> <p>2 Q. But you agree that the vast majority of blacks 3 and whites are living in fairly integrated 4 neighborhoods; is that right?</p> <p>5 A. Most -- most of the precincts in the district 6 have either more than twenty percent African-American 7 or less than eighty percent African-American voting age 8 population.</p> <p>9 Q. Do you know where the homogenous black 10 precincts are located in the district?</p> <p>11 A. Not all of them. I'm guessing most of them 12 are probably in the Ferguson area but I don't know for 13 sure.</p> <p>14 Q. Can you look at Table 2 in your supplemental 15 report? And in that table --</p> <p>16 A. Uh-huh.</p> <p>17 Q. -- you use an eighty/twenty cutoff; is that 18 right?</p> <p>19 A. For homogeneous precincts, yes.</p> <p>20 Q. And in Table 3 you switch to a ninety/ten 21 cutoff, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And can you show me in the text where you 24 explain that you're changing from eighty/twenty to 25 ninety/ten?</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. -- in your initial report?</p> <p>2 A. In the initial report?</p> <p>3 On page 5 of my initial report in the section 4 homogeneous precinct analysis, the first two sentences 5 are the eighty/twenty analysis and the next two 6 sentences are ninety/ten analysis.</p> <p>7 Q. Is that it?</p> <p>8 A. I think that was the only part of my initial 9 report where I did the homogeneous precinct analysis. 10 I think that's right.</p> <p>11 Q. And do you believe it's common to switch back 12 and forth between two different thresholds within 13 reports?</p> <p>14 A. That's -- I -- I think it's useful to do that 15 just to see if the results change dramatically when you 16 go from one to the other.</p> <p>17 Q. Are you done?</p> <p>18 A. Yes.</p> <p>19 Q. And were you comparing your own results 20 between twenty-eighty and ten/ninety?</p> <p>21 A. I think -- on my second report?</p> <p>22 Q. Uh-huh. Yes.</p> <p>23 A. I think I just did what I reported in the 24 tables here. I can't remember if I also did a 25 ninety/ten for Table 2 or an eighty/twenty for Table 3.</p>
<p style="text-align: right;">Page 38</p> <p>1 A. I don't think I said anything in the text. I 2 just put it in the tables what those were.</p> <p>3 Q. So you didn't think it was important to inform 4 the reader that you were changing from one cutoff to 5 the other in your tables?</p> <p>6 A. I thought the tables spoke for themselves, 7 indicating what the analysis was.</p> <p>8 Q. I guess I'm a little confused on why you said 9 there weren't enough precincts to do -- to use the 10 ninety/ten cutoff but then you do use the ninety/ten 11 cutoff for Table 3.</p> <p>12 A. I think Engstrom was the one who said that, 13 not me. That there weren't enough precincts to do a 14 ninety/ten cutoff.</p> <p>15 Q. But you chose to, except in Table 3, use an 16 eighty/twenty cutoff; is that right?</p> <p>17 A. In Table 2 I did an eighty/twenty cutoff. In 18 Table 3 I did a ninety/ten.</p> <p>19 Q. And what did you do in your initial report?</p> <p>20 A. In the initial report I did an eighty -- well, 21 in the initial report I did both, eighty/twenty and 22 ninety/ten.</p> <p>23 Q. Can you show me where you did the 24 eighty/twenty and where you did the ninety/ten --</p> <p>25 A. In the --</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. So that was my next question. Did you conduct 2 analysis of turnout with what you describe as the 3 eighty/twenty cutoff?</p> <p>4 A. I can't remember if I did or what the -- yeah, 5 I can't remember if I did or not.</p> <p>6 Q. How long would it take you to do both of the 7 calculations?</p> <p>8 A. Not too long. Maybe an hour.</p> <p>9 Q. So when you were preparing your report you 10 didn't switch between the two thresholds to determine 11 which numbers to compare your results prior to putting 12 them in your -- you just decided I'm going to use 13 ninety/ten for the turnout but I'm going to use 14 eighty/twenty when determining preferred candidates?</p> <p>15 That just -- those numbers just -- you just decided 16 that?</p> <p>17 A. Eighty to ninety is just, yeah, is generally 18 where homogeneous precincts is usually done, yeah. And 19 one I reported eighty/twenty and the other I reported 20 ninety/ten.</p> <p>21 Q. And you didn't do calculations both ways?</p> <p>22 When you're writing your report you thought, Oh, I 23 think for a minority-preferred candidate I'm going to 24 use eighty/twenty and then I think what I'm doing is 25 going to turn around and do ninety/ten. You just --</p>

<p style="text-align: center;">Page 41</p> <p>1 you just decided that and then didn't do any other 2 calculations for the other way?</p> <p>3 MS. LAKIN: Asked and answered.</p> <p>4 Q. (By Ms. Ormsby) Okay.</p> <p>5 A. I just did these, these here.</p> <p>6 Q. Okay. Do you believe that that would be an 7 acceptable method should you be submitting this as a 8 peer-reviewed report?</p> <p>9 A. I think using homogeneous precincts analysis 10 and the other methods would be appropriate for a peer 11 review.</p> <p>12 Q. That's not my question. Do you think it's 13 appropriate to switch between thresholds? Do you think 14 that that would be an acceptable -- what's the word I'm 15 looking for -- method -- would that be -- would that 16 pass muster in any peer-reviewed report where you're 17 switching between thresholds, without any discussion of 18 switching between thresholds, just doing it without any 19 explanation of why?</p> <p>20 A. I can see peer reviewers saying just do a 21 consistent cutoff, either eighty/twenty or 22 ninety/ten.</p> <p>23 Q. But you didn't think to do that in this 24 report?</p> <p>25 A. No.</p>	<p style="text-align: center;">Page 43</p> <p>1 aggregate votes of black candidates rather than votes 2 for individual candidates of choice; is that right?</p> <p>3 A. In my --</p> <p>4 Q. Initial report.</p> <p>5 A. -- initial report?</p> <p>6 Q. Yes.</p> <p>7 A. The part on the 2014 election?</p> <p>8 Q. Yes.</p> <p>9 A. Right. I just focused on the three 10 African-American candidates who ran together under that 11 reform coalition.</p> <p>12 Q. And you showed that the so-called coalition 13 candidates in 2014 received higher vote shares in 14 African-American precincts than in white precincts; is 15 that right?</p> <p>16 A. That was my -- that was my estimate.</p> <p>17 Q. Okay. And then in your supplemental report 18 you moved into a different analysis and discussed 19 individual candidates of choice; is that right?</p> <p>20 A. In my rebuttal report?</p> <p>21 Q. Yes.</p> <p>22 A. Yeah. In Table 2 I looked at individual 23 candidates.</p> <p>24 Q. Why did you decide to switch strategies there?</p> <p>25 A. The -- a couple of reasons. One, I was</p>
<p style="text-align: center;">Page 42</p> <p>1 Q. Did you conduct the ecological inference 2 analysis of turnout by race in the Ferguson-Florissant 3 School District?</p> <p>4 A. No. Rodden did that in his report.</p> <p>5 Q. So you didn't do the analysis to see if you 6 agreed with Dr. Rodden's results?</p> <p>7 A. I figured he did it correctly, so -- so I 8 didn't see the need to do it myself.</p> <p>9 Q. So do you believe that in this case the court 10 should reject ecological inference in favor of 11 homogeneous precinct analysis to determine whether or 12 not turnout -- the comparison of turnout between blacks 13 and whites?</p> <p>14 A. No. My point is it's useful to look at 15 different -- the different measures together. All of 16 this is -- all this is inferential. And that's the 17 challenge here, is we want to try and figure out voting 18 behavior of African Americans and whites, but they're 19 mixed together in precincts and all we have are the 20 precinct results.</p> <p>21 And so any one method is going to be an estimate. 22 And so it's my point it's good to use them together and 23 consider all of the information used by these different 24 approaches.</p> <p>25 Q. So in your initial report you focused on</p>	<p style="text-align: center;">Page 44</p> <p>1 responding to Rodden's report and he produced estimates 2 of vote shares for individual candidates. And two, his 3 report only -- I thought his report didn't provide 4 enough comparisons between the voting behavior of 5 whites versus the voting behavior of African Americans 6 and so that's what I wanted to include in that portion 7 of my rebuttal report.</p> <p>8 Q. Do you believe that both of your strategies 9 are valid?</p> <p>10 A. Both of our strategies --</p> <p>11 Q. Both of -- no, no, no. Both of your 12 strategies from your initial report to your 13 supplemental report where you analyzed just the three 14 candidates running together and then the individual 15 candidates.</p> <p>16 MS. EBENSTEIN: Just to be clear, when you're 17 referring to a supplemental report, do you mean his 18 rebuttal to Dr. Rodden's report?</p> <p>19 MS. ORMSBY: I do. Yeah. I use supplemental 20 and rebuttal interchangeably so. Just so you're clear 21 when I say supplement I mean.</p> <p>22 A. Yes, I think both approaches are valid. I'm 23 trying to provide additional --</p> <p>24 Q. (By Ms. Ormsby) Okay.</p> <p>25 A. -- information.</p>

<p style="text-align: right;">Page 45</p> <p>1 Q. All right. Did you ever examine the combined 2 vote shares of black candidates in 2015 in 3 overwhelmingly black and overwhelmingly white 4 precincts?</p> <p>5 A. I don't think I did. All I did is what's in 6 my rebuttal report.</p> <p>7 Q. So you didn't do it for 2013 or earlier 8 elections either? That's right, correct?</p> <p>9 A. The combined vote share of African-American 10 candidates?</p> <p>11 Q. Correct.</p> <p>12 A. No.</p> <p>13 Q. Do you know what bullet voting or single-shot 14 voting is?</p> <p>15 A. I believe it means in a multicandidate 16 election just voting for one candidate and not using 17 your remaining votes for any other candidates; is that 18 right?</p> <p>19 Q. That's correct.</p> <p>20 And do you believe that African Americans have 21 fewer opportunities than whites to engage in this 22 voting strategy?</p> <p>23 A. Engage in bullet voting?</p> <p>24 Q. Yes.</p> <p>25 A. Any voter can engage in bullet voting.</p>	<p style="text-align: right;">Page 47</p> <p>1 candidate?</p> <p>2 A. I can't remember the candidate's name.</p> <p>3 Q. Would it be F. Willis Thurman -- I mean, at 4 the top -- not Thurman. Johnson?</p> <p>5 A. I think that could be.</p> <p>6 Q. Yeah.</p> <p>7 Do you have any idea how many votes he lost by?</p> <p>8 A. Not off the top of my head.</p> <p>9 Q. So there were three African-American coalition 10 candidates in 2014 but there were five African-American 11 candidates on the ballot; is that right?</p> <p>12 A. I'm sorry?</p> <p>13 Q. There were five African-American candidates on 14 the ballot. Three of those five were --</p> <p>15 A. -- Part of this coalition, right.</p> <p>16 Q. Okay.</p> <p>17 A. In 2014.</p> <p>18 Q. Okay. If the fourth and fifth place 19 African-American candidates had not run for office, and 20 the electorate is racially polarized as you suggest, 21 what are the chances that Savala would have won?</p> <p>22 A. I don't know. I mean, it's hard for me to 23 speculate about what would have happened if the number 24 of candidates running was different than what it was.</p> <p>25 Q. So can you tell us a little about the</p>
<p style="text-align: right;">Page 46</p> <p>1 Q. All right. Let's look at the 2014 election 2 analysis. In your initial reports with regard to 3 Senate Factor 2, again it's only based on the 2014 4 election, right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And how many African Americans ran for 7 election that year?</p> <p>8 A. 2014, I believe there were five.</p> <p>9 Q. And how many of those five were elected?</p> <p>10 A. I believe one.</p> <p>11 Q. And do you remember which coalition candidate 12 came in second?</p> <p>13 A. I believe it was Mr. Savala. Do I have the 14 name right?</p> <p>15 Q. Yes.</p> <p>16 And do you remember how many votes he lost by?</p> <p>17 A. Not exactly. It was around a hundred or it 18 was pretty close I think.</p> <p>19 Q. In an article that you wrote that we're going 20 to look at later you said ninety-one. Do you have 21 any --</p> <p>22 A. -- Okay.</p> <p>23 Q. Okay.</p> <p>24 A. That could -- that's probably right.</p> <p>25 Q. Okay. And who was the third place coalition</p>	<p style="text-align: right;">Page 48</p> <p>1 coalition? I think it was called Grade A for change. 2 Does that ring a bell?</p> <p>3 A. That sounds -- uh-huh.</p> <p>4 Q. Can you tell me what it was?</p> <p>5 A. Three African-American candidates who were 6 running for the school board. I think my impression, 7 just based on the news reports I read, was that maybe 8 partly they were motivated by the suspension of the 9 superintendent that happened some months before the 10 election.</p> <p>11 But since reform was in their title, I assume some 12 kind of a reform coalition running against the sitting 13 members of the board.</p> <p>14 Q. Was the coalition racially based?</p> <p>15 A. Well, the three candidates were African 16 American, if that's what you mean.</p> <p>17 Q. Do you believe the three ran because they 18 believed more African Americans needed to be on the 19 school board?</p> <p>20 A. I don't know that for certain. Yeah, I don't 21 know for certain.</p> <p>22 Q. Do you speculate as to -- do you speculate 23 about that in any of the articles that you've written?</p> <p>24 A. Articles that I've -- you mean my reports?</p> <p>25 Q. No, I mean media articles that you've written</p>

<p style="text-align: right;">Page 49</p> <p>1 regarding the Ferguson-Florissant situation.</p> <p>2 A. Like media reports where they quoted me?</p> <p>3 Q. No, where you've actually written some</p> <p>4 articles that we're going to look at in a little bit.</p> <p>5 A. Oh, like the blog posts?</p> <p>6 Q. Uh-huh. Yeah.</p> <p>7 A. I can't remember everything what I said on the</p> <p>8 blog posts. But, I mean, I think -- I assume the</p> <p>9 suspension of the superintendent seemed to be a hot</p> <p>10 issue at the time so I'm guessing that that was a</p> <p>11 factor in why they ran.</p> <p>12 Q. Were there enough African-American votes in</p> <p>13 the 2014 election to elect all three coalition</p> <p>14 candidates if all of the votes would have gone to those</p> <p>15 three candidates?</p> <p>16 A. If all? I'm sorry. What do you mean?</p> <p>17 Q. You collected raw data that gave you the</p> <p>18 number of votes, correct?</p> <p>19 A. Yeah, by precinct.</p> <p>20 Q. Yeah. So if all of the African-American votes</p> <p>21 went to those three candidates and none with the other</p> <p>22 two, would that have been enough for the African</p> <p>23 American -- all three slate members to win?</p> <p>24 A. I think so. I can't remember exactly what the</p> <p>25 totals for the other two were, but at least it might</p>	<p style="text-align: right;">Page 51</p> <p>1 changes. They're not visually apparent.</p> <p>2 What is the second graph?</p> <p>3 A. The second graph shows voter turnout by</p> <p>4 precinct in the same election by African-American share</p> <p>5 of voting age population.</p> <p>6 Q. And what did you conclude about turnout in the</p> <p>7 April 2014 election?</p> <p>8 A. In the blog?</p> <p>9 Q. Yes.</p> <p>10 A. I said that the relationship between race and</p> <p>11 turnout in the graph is pretty weak.</p> <p>12 Q. And is there a reason you didn't include this</p> <p>13 conclusion in your expert report when you talked about</p> <p>14 turnout?</p> <p>15 A. Part -- in this one I measured turnout as</p> <p>16 percentage of registered voters, and I would prefer to</p> <p>17 measure it as percentage of voting age population.</p> <p>18 That's probably one reason. I think for my report I</p> <p>19 was just looking at whether there was evidence of</p> <p>20 racially polarized voting and so that was the first</p> <p>21 graph. The turnout graph didn't speak to racially</p> <p>22 polarized voting.</p> <p>23 Q. In this article you also discussed the</p> <p>24 resignation of Dr. McCoy, the district's</p> <p>25 African-American superintendent, correct?</p>
<p style="text-align: right;">Page 50</p> <p>1 have been enough for Savala to win. I'm not sure about</p> <p>2 the other coalition candidate.</p> <p>3 MS. ORMSBY: Can you get the exhibit of voting</p> <p>4 in 2014.</p> <p>5 (Defendant's Exhibit S was marked for</p> <p>6 identification.)</p> <p>7 Q. (By Ms. Ormsby) I'll let you look that over</p> <p>8 for a minute. Do you recognize that?</p> <p>9 A. This looks like my blog post.</p> <p>10 Q. What is "Arch Politics, Analysis of politics</p> <p>11 in St. Louis and the USA?"</p> <p>12 A. It's a blog that I post to.</p> <p>13 Q. Okay. And did you post -- did you post</p> <p>14 originally on August 28th and then update it on</p> <p>15 September 9th, 2014?</p> <p>16 A. Yes.</p> <p>17 Q. Did you do the analysis for your initial</p> <p>18 expert report independently or did you take some of it</p> <p>19 from this article that you published in 2014?</p> <p>20 A. The graph -- the first graph in my blog looks</p> <p>21 similar to the graph in my expert report. I'm not sure</p> <p>22 if they're exactly the same.</p> <p>23 Q. This article includes two graphs. The first</p> <p>24 graph when I compared looked identical to the one in</p> <p>25 your expert report; although, there could be some</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Yes.</p> <p>2 Q. And do you think his resignation affected the</p> <p>3 racial polarization that you found?</p> <p>4 A. It could have. I didn't analyze that</p> <p>5 specifically.</p> <p>6 Q. Do you imply it in this article?</p> <p>7 MS. EBENSTEIN: Take your time to just read</p> <p>8 it.</p> <p>9 MS. ORMSBY: Absolutely.</p> <p>10 A. Yeah, I said one by-product of the protest was</p> <p>11 the three African-American candidates who were</p> <p>12 recruited to seats on the board. So there could have</p> <p>13 been a connection.</p> <p>14 Q. (By Ms. Ormsby) And did you write a few</p> <p>15 articles or blogs where you commented negatively on</p> <p>16 Dr. McCoy's resignation and the board's lack of</p> <p>17 transparency?</p> <p>18 A. I think I mention that here in this blog.</p> <p>19 Q. Do you remember if you mentioned it in others?</p> <p>20 A. I thought this was the only blog post I made</p> <p>21 about the -- about the school board election. I'm not</p> <p>22 sure.</p> <p>23 Q. Did you speak to any media outlets and make</p> <p>24 that allegation?</p> <p>25 A. Could be.</p>

<p style="text-align: right;">Page 53</p> <p>1 Yeah, along the similar line, the lack of 2 transparency. I'm not sure that any explanation was 3 given for his suspension and resignation. 4 Q. Let's go to that. I was going to save that 5 for later but that's a good segue. 6 Are you aware that the school board can't disclose 7 personnel issues without a release from the employee? 8 A. I'm not familiar with school board policies. 9 Q. Would you consider Dr. McCoy's suspension a 10 personnel issue? 11 A. It could be. 12 Q. Didn't, in fact, the school board mention that 13 it was in several.... 14 A. They may have. Yeah, I.... 15 Q. Are you aware that Dr. McCoy was represented 16 by legal counsel immediately upon his suspension? 17 A. Did I know he was represented by legal 18 counsel? 19 Q. Immediately after he was suspended? 20 A. No, I don't think that was in the news reports 21 about the.... 22 Q. And are you aware that Dr. McCoy refused to 23 sign a release so the board could discuss the issues 24 that led up to Dr. McCoy's suspension? 25 A. No, I don't think I knew that either.</p>	<p style="text-align: right;">Page 55</p> <p>1 suspension was not racially motivated? 2 MS. EBENSTEIN: Objection. That 3 mischaracterizes, I believe, what occurred and anything 4 that's been entered in this case. 5 Q. (By Ms. Ormsby) It's a question that you can 6 go ahead and answer. 7 Were you aware of that? 8 A. What was the question again? 9 Q. That the board arranged a meeting with the 10 local NAACP to assure them that Dr. McCoy's suspension 11 was not racially motivated? 12 A. I didn't know about that. 13 Q. And are you aware that the school board had a 14 special meeting to take public comments on the issue? 15 A. No. 16 Q. And are you aware that not only did Dr. McCoy 17 have strong African-American support, but he also had 18 support from whites as well? 19 A. Judging by the uproar, I figure he probably 20 had lots of support. 21 Q. And are you aware of the statement made by 22 Dr. McCoy following his resignation that stated his 23 suspension was not racially motivated? 24 A. I don't think I saw that. 25 Q. So do you agree that you didn't have all the</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. And are you aware that Dr. McCoy and his 2 attorney explicitly required the board not to release 3 any of the personnel information surrounding his 4 suspension? 5 A. No. I mean, obviously internal board 6 deliberations, I wouldn't have any knowledge of that. 7 Q. Do you know that in this case Dr. McCoy and 8 his attorney continued to refuse to let the district 9 disclose the documentation surrounding the charges 10 brought against Dr. McCoy in order to keep them 11 private? 12 A. No, I don't think I knew that. 13 Q. And is it your belief that no matter what 14 Dr. McCoy did, the board should have done nothing 15 because he had support of the African-American 16 community? 17 A. No. I think what I was saying in the blog 18 post that it would be nice for the public to know 19 why -- why he left. 20 Q. Even if that would have resulted in legal 21 action against the board? 22 A. Well, I mean, now I understand legal issues. 23 Q. Let me finish my question. 24 Are you aware that the board arranged a meeting 25 with the local NAACP to assure them that Dr. McCoy's</p>	<p style="text-align: right;">Page 56</p> <p>1 facts about Dr. McCoy when you concluded that the board 2 was not responding to the needs of minorities? 3 A. I think I could still understand why residents 4 of the district would be frustrated about not knowing 5 what was going on. 6 Q. And do you believe that the board should have 7 informed the public against Dr. McCoy's wishes? 8 A. No. I guess all I was trying to say was I 9 understand why the public would be frustrated about not 10 knowing why he left. 11 Q. Could you read the paragraph of your blog 12 that -- not the paragraph but the sentence -- I guess 13 it's in the second paragraph. It's kind of hard to 14 tell in this article. Near the end it says: Both the 15 school board and McCoy. Could you read that? 16 A. Both the school board and McCoy have been 17 tight-lipped about the reasons for his suspension and 18 resignation. 19 Q. Keep going. 20 A. For a time the board investigated, quote, 21 reporting irregularities by McCoy but as far as I can 22 tell nothing has come of that. 23 Q. Read to the end of the paragraph. 24 A. In any case, in what sounds all too familiar 25 now the lack of transparency about his suspension</p>

<p style="text-align: right;">Page 57</p> <p>1 created frustration in the local community and fueled 2 protests of the board's decision. And I cited a 3 newspaper article.</p> <p>4 Q. And then you go on to say that that's why you 5 believe the African-American candidates were recruited 6 to run for the three open seats?</p> <p>7 A. Well, I said one by-product of the protest was 8 that three African-American candidates were recruited 9 to run.</p> <p>10 Q. Do you believe that the board could also have 11 been frustrated by the situation?</p> <p>12 A. Sure.</p> <p>13 Q. So earlier you stated that the coalition -- 14 well, after reviewing what you wrote here and wrote in 15 your blog, do you still believe that the -- do you 16 believe the coalition was racially motivated or not?</p> <p>17 MS. LAKIN: Can you -- strike that.</p> <p>18 A. I guess I --</p> <p>19 Q. (By Ms. Ormsby) Would you like me to 20 rephrase?</p> <p>21 MS. ORMSBY: Would you like me to rephrase, 22 Sophia?</p> <p>23 Q. (By Ms. Ormsby) Based on reviewing your blog 24 post and what you said at the time, do you believe that 25 the coalition of African-American candidates, that</p>	<p style="text-align: right;">Page 59</p> <p>1 paragraph of this article you state near the end, 2 second to last sentence: Much of the recent discussion 3 was focused on the city council and police force and 4 less on the Ferguson-Florissant School District, which 5 includes most of Ferguson as well as some surrounding 6 communities.</p> <p>7 Did I read that correctly?</p> <p>8 A. I think so.</p> <p>9 Q. And are you aware of how much of Ferguson is 10 inside the Ferguson-Florissant School District?</p> <p>11 A. Part of the city of Ferguson is in the school 12 district.</p> <p>13 Q. Would you be surprised to know it's 14 twenty-seven percent of the city of Ferguson located in 15 the Ferguson-Florissant School District?</p> <p>16 A. Twenty-seven percent of the --</p> <p>17 Q. Of Ferguson.</p> <p>18 A. -- the residents or the area?</p> <p>19 Q. Of -- good question. I think Ferguson is 20 pretty evenly populated however. So twenty-five 21 percent of Ferguson.</p> <p>22 A. Yeah, part of Ferguson is in the school 23 district and part of Ferguson is outside the school 24 district.</p> <p>25 Q. But would you agree that most of Ferguson is</p>
<p style="text-align: right;">Page 58</p> <p>1 their formation was racially motivated or not?</p> <p>2 A. I guess -- I'm not sure I'd want to speculate 3 about that. I mean -- I mean, in my blog I said I 4 think partly they may have been motivated to run as a 5 reaction to McCoy's resignation. I don't know how much 6 to make -- to label that as racially motivated.</p> <p>7 Q. And you talked also in your blog about the 8 white board suspending an African-American 9 superintendent, correct?</p> <p>10 A. The school board that suspended McCoy was all 11 white.</p> <p>12 Q. And do you know the racial makeup of the board 13 when Dr. McCoy was hired?</p> <p>14 A. That would have been three or four years prior 15 when there still may have been an African American on 16 the board at the time. So there may have been -- there 17 may have been one or two African Americans on the board 18 when he was hired.</p> <p>19 Q. But would you agree it was a majority white 20 board at the time that Dr --</p> <p>21 A. -- When he was hired, yeah.</p> <p>22 Q. Okay. Let's go on to page 6 of your initial 23 report. Let me look at this. When -- let me look at 24 this for just a second.</p> <p>25 I just want to make one other point. In the first</p>	<p style="text-align: right;">Page 60</p> <p>1 not in the Ferguson-Florissant School District?</p> <p>2 A. I'm not certain either way.</p> <p>3 Q. So you weren't -- you weren't certain when you 4 wrote this that includes most of Ferguson? Did you 5 just assume that that was true?</p> <p>6 A. I mean, I haven't checked the figures lately 7 to verify what -- whether it's twenty-seven percent or 8 something else. Yeah. So I'm not sure.</p> <p>9 Q. And are you aware where the protests are 10 taking place or where most of the events of Ferguson -- 11 is it your belief that where those protests are taking 12 place and Canfield Apartment complex, which we've heard 13 a lot about, is it your belief that that's in or 14 outside the Ferguson-Florissant School District?</p> <p>15 A. I think that's outside.</p> <p>16 Q. Okay. Page 6 of your initial report. And if 17 you could read the last -- I'll read it. I'm at the 18 last sentence of the first full paragraph.</p> <p>19 "When there is racially polarized voting, a white 20 majority can more effectively determine the winners of 21 all at-large seats."</p> <p>22 Did I read that correctly?</p> <p>23 A. Yes.</p> <p>24 Q. So you're saying that if there's a white 25 majority, I'm assuming of voting age population or</p>

<p style="text-align: right;">Page 61</p> <p>1 total population?</p> <p>2 A. Yeah, I didn't specify but voting age</p> <p>3 population would probably be more precise.</p> <p>4 Q. Okay.</p> <p>5 A. But probably applies to either.</p> <p>6 Q. You think it could apply to either?</p> <p>7 A. Well, here I was looking -- I was citing</p> <p>8 literature and political science studies tend to find</p> <p>9 in places where there's a white majority of the overall</p> <p>10 population, then there's also a white majority of the</p> <p>11 voting age population.</p> <p>12 Q. And how do you define majority?</p> <p>13 A. Fifty percent or more. Or above fifty</p> <p>14 percent. I should be more precise.</p> <p>15 Q. Okay. So what about if there was a black</p> <p>16 majority, can they determine all the winners of the</p> <p>17 seats?</p> <p>18 A. In -- in at-large elections?</p> <p>19 Q. Yes.</p> <p>20 A. Potentially.</p> <p>21 Q. If you could look at Footnote 5 on that same</p> <p>22 page.</p> <p>23 A. Uh-huh.</p> <p>24 Q. Which I believe is the footnote that goes to</p> <p>25 that sentence that I just read.</p>	<p style="text-align: right;">Page 63</p> <p>1 but.</p> <p>2 Q. And then the next sentence says: Districts</p> <p>3 might even decrease the group's representation on the</p> <p>4 city council.</p> <p>5 Is that right?</p> <p>6 A. If a group is -- holds a majority.</p> <p>7 Q. Okay. So next in your initial report -- you</p> <p>8 can put that away.</p> <p>9 Next in your initial report you talk about</p> <p>10 turnout. Have you ever analyzed -- prior to writing</p> <p>11 this report had you analyzed turnout in a district?</p> <p>12 A. Just in that blog post.</p> <p>13 Q. So for 2014 in that blog post?</p> <p>14 But you didn't cite from your blog post the</p> <p>15 conclusion that the relationship between race and</p> <p>16 turnout is pretty weak; is that right?</p> <p>17 A. That part wasn't in my report.</p> <p>18 Q. When you say in your initial report that,</p> <p>19 quote, Turnout among African-American voters tends to</p> <p>20 be disproportionately low in off cycles. And that's on</p> <p>21 page 6, the second full paragraph. What do you base</p> <p>22 that on?</p> <p>23 A. Page 6?</p> <p>24 Q. Yeah. Do you see it? Page 6, second full</p> <p>25 paragraph. It starts: In addition, turnout among</p>
<p style="text-align: right;">Page 62</p> <p>1 A. Uh-huh.</p> <p>2 Q. In that note you cite to several scholarly</p> <p>3 articles and the first one you cite is, "The context</p> <p>4 matters".</p> <p>5 A. Uh-huh.</p> <p>6 Q. "The effects of single-member versus at-large</p> <p>7 districts"; is that right?</p> <p>8 A. Yes.</p> <p>9 MS. ORMSBY: I want to mark that as an</p> <p>10 exhibit.</p> <p>11 (Defendant's Exhibit T was marked for</p> <p>12 identification.)</p> <p>13 Q. (By Ms. Ormsby) Is this the article that you</p> <p>14 were citing to?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Could you turn to page 556. And the</p> <p>17 last paragraph of the first column. Going down to --</p> <p>18 about two thirds of the way down.</p> <p>19 "Alternatively if a group composes a majority of</p> <p>20 the city population in a majoritarian, at-large system,</p> <p>21 the group may be able to win all of the council seats."</p> <p>22 So that's what you were referring to in this?</p> <p>23 A. Uh-huh.</p> <p>24 Q. Right.</p> <p>25 A. Well, I mean, I was citing the whole article</p>	<p style="text-align: right;">Page 64</p> <p>1 African-American voters tends to be disproportionately</p> <p>2 low in off-cycle local elections.</p> <p>3 A. Yeah. There -- and I cited a couple studies.</p> <p>4 There I was referring to some political science studies</p> <p>5 that have found that.</p> <p>6 Q. What does that mean though? What does that</p> <p>7 sentence mean?</p> <p>8 A. Turnout of African-American voters tends to be</p> <p>9 disproportionately low in off-cycle elections.</p> <p>10 That, I guess doesn't mean either what I said.</p> <p>11 Turnout of African-American voters tends to be</p> <p>12 disproportionately low in off-cycle elections.</p> <p>13 Q. All right. I'll withdraw the question.</p> <p>14 A. Okay.</p> <p>15 Q. But when you -- when you wrote your blog post,</p> <p>16 that -- your evidence doesn't show that that's what</p> <p>17 happened in Ferguson-Florissant; is that right?</p> <p>18 According to your blog post, the conclusions in your</p> <p>19 blog post?</p> <p>20 A. The blog post said the relationship between</p> <p>21 race and turnout in that figure was weak; although,</p> <p>22 it's still indicated that turnout among African</p> <p>23 Americans was lower than among white voters. --</p> <p>24 Q. It was lower.</p> <p>25 A. -- or that's what I concluded in the blog</p>

<p style="text-align: right;">Page 65</p> <p>1 post.</p> <p>2 Q. Right. I think you say specifically: Turnout</p> <p>3 is only about six percentage points higher on average</p> <p>4 in the majority white precincts than the majority black</p> <p>5 precincts. This does not seem to be as large as the</p> <p>6 racial disparity in the turnout in the April 2013</p> <p>7 election. Is that right?</p> <p>8 A. Right.</p> <p>9 Q. So when you make this statement in your</p> <p>10 initial report, are you talking in a more generalized</p> <p>11 nature or are you talking specific to the</p> <p>12 Ferguson-Florissant School District when you state</p> <p>13 turnout among African-American voters tends to be</p> <p>14 disproportionately low in off-cycle elections?</p> <p>15 A. Yeah. Here I was referring to political</p> <p>16 science studies.</p> <p>17 Q. But not specific to Ferguson-Florissant?</p> <p>18 A. Right. I was describing the political science</p> <p>19 literature in that part.</p> <p>20 Q. Okay. And have you examined racial turnout</p> <p>21 differentials in elections held in the district in</p> <p>22 other months? Say, in August or in November?</p> <p>23 A. In the Ferguson-Florissant School District?</p> <p>24 Q. Yeah.</p> <p>25 A. Not in -- not in -- not in other months.</p>	<p style="text-align: right;">Page 67</p> <p>1 Q. Yes.</p> <p>2 A. Okay.</p> <p>3 Q. And then you identify how many -- you state:</p> <p>4 Nine of the twelve candidates endorsed by the local NEA</p> <p>5 affiliate are white. Is that what you say?</p> <p>6 A. Yeah.</p> <p>7 Q. Okay. Now, do you know how many African</p> <p>8 Americans applied for the NEA endorsement?</p> <p>9 A. No.</p> <p>10 Q. And do you believe that whites apply for NEA</p> <p>11 endorsement more than blacks?</p> <p>12 A. I don't know one way or the other. I just</p> <p>13 thought it was interesting to examine the figures on</p> <p>14 endorsements.</p> <p>15 Q. So you might be -- so the differential rate at</p> <p>16 which whites apply for the endorsement and blacks is</p> <p>17 not captured in this data; is that right?</p> <p>18 A. Right. This is just who was endorsed and who</p> <p>19 was not endorsed.</p> <p>20 Q. In 2015 -- 2015, do you know whether all of</p> <p>21 the African-American candidates applied for the NEA</p> <p>22 endorsement?</p> <p>23 A. No, I don't know who applied for endorsements.</p> <p>24 Q. So you don't know whether blacks even applied</p> <p>25 for the endorsement at the same rate as whites did?</p>
<p style="text-align: right;">Page 66</p> <p>1 Q. Okay. So we don't have any basis to claim</p> <p>2 that the turnout differential is different in elections</p> <p>3 held in other months?</p> <p>4 You've provided -- you've provided nothing --</p> <p>5 A. -- I didn't provide evidence, no. This</p> <p>6 section, I'm just summarizing a variety of studies in</p> <p>7 the political science literature that have examined</p> <p>8 local elections.</p> <p>9 Q. Sure. Okay. If you could turn to page 8 now.</p> <p>10 And you talk about labor -- local labor organizations</p> <p>11 and endorsements; is that right?</p> <p>12 A. Yes.</p> <p>13 Q. And in your first -- the first full paragraph</p> <p>14 on page 8, you give the total number of candidates that</p> <p>15 ran for election in years by race; is that right?</p> <p>16 A. Which?</p> <p>17 Q. The first full paragraph on page 8.</p> <p>18 A. Yeah.</p> <p>19 Q. Starting local labor organizations. And you</p> <p>20 analyzed -- you provided the total number of candidates</p> <p>21 that ran for election in years by race; is that right?</p> <p>22 A. I provided the number of candidates running in</p> <p>23 the five elections I examined?</p> <p>24 Q. Uh-huh.</p> <p>25 A. That part you mean?</p>	<p style="text-align: right;">Page 68</p> <p>1 A. Correct.</p> <p>2 Q. And then you state that all of the white</p> <p>3 candidates who were endorsed won but the blacks didn't.</p> <p>4 So does that mean that more endorsements would help</p> <p>5 African Americans if they received more of them?</p> <p>6 A. I just thought it was interesting to report</p> <p>7 those numbers on endorsements. Who was endorsed and</p> <p>8 how they did. And some of those numbers I updated in</p> <p>9 my rebuttal report.</p> <p>10 Q. It seems to me if African Americans received</p> <p>11 the endorsement and lost, they might not want the</p> <p>12 endorsement; is that true?</p> <p>13 A. Well, it was such a small number of</p> <p>14 African-American candidates who were endorsed, it's</p> <p>15 hard to draw a conclusion.</p> <p>16 Usually labor endorsements are things candidates</p> <p>17 would like to have in local elections.</p> <p>18 Q. Are you aware of the racial makeup of the NEA</p> <p>19 endorsing committee?</p> <p>20 A. No.</p> <p>21 Q. Let's look at North County Labor, which is the</p> <p>22 next paragraph that you refer to.</p> <p>23 A. Uh-huh.</p> <p>24 Q. Do you know how many candidates applied for</p> <p>25 the North County Labor endorsement?</p>

<p style="text-align: right;">Page 69</p> <p>1 A. No.</p> <p>2 Q. Do you know whether Courtney Graves applied 3 for the North County Labor endorsement?</p> <p>4 A. No.</p> <p>5 Q. So she stated in her deposition that she did 6 not apply for that endorsement. So would that make any 7 difference in your conclusions? Would it change your 8 denominators?</p> <p>9 A. No. I was -- I thought it was interesting to 10 look at who -- who got the endorsements and how they 11 faired in the elections.</p> <p>12 Q. But wouldn't you -- wouldn't you agree that 13 without a specific context that this information could 14 be misleading?</p> <p>15 A. The -- I don't know. I think the numbers kind 16 of speak for themselves. I'm not trying to make 17 statements about how the -- how the endorsement process 18 works, I'm looking at the end result of the endorsement 19 process.</p> <p>20 Q. But you're stating that nine of twelve 21 candidates were endorsed by the local affiliate were 22 white, not knowing whether all of those twelve 23 candidates even sought that endorsement. So it 24 skews -- don't you agree that it skews the denominator 25 if only nine candidates sought the endorsement? Then</p>	<p style="text-align: right;">Page 71</p> <p>1 was when you made the --</p> <p>2 A. -- No, I didn't look into....</p> <p>3 Q. Okay. I'm moving on to your Senate 5 4 analysis. So as I'm looking through this analysis I'm 5 wondering if you could tell me, as you flip through 6 these pages under this section, which information 7 applies specifically to the Ferguson-Florissant School 8 District.</p> <p>9 A. Which?</p> <p>10 Q. All of the paragraphs under Senate Factor 5 11 beginning on page 8 and I believe it goes to page 14. 12 I've looked through it. I can only find you discussing 13 St. Louis County, the region, and the municipality of 14 Ferguson. And I'm wondering about whether or not you 15 did any analysis specific to the Ferguson-Florissant 16 School District.</p> <p>17 A. Let's see. Section page 9 mentions local 18 zoning practices in Berkeley and Ferguson.</p> <p>19 Q. But not the district specifically.</p> <p>20 A. Right. But those are areas that are part of 21 the district.</p> <p>22 Correct. Page 10 mentions the expansion of the 23 Ferguson-Florissant School District and include 24 Berkeley and Kinloch.</p> <p>25 Q. A historical fact, correct?</p>
<p style="text-align: right;">Page 70</p> <p>1 it would be nine of nine endorsed, you know. It 2 changes the implication. Do you agree with that?</p> <p>3 A. It could. Candidates may not know that 4 they're supposed to apply for endorsement or know how 5 to apply. You know, there's lots of -- I'm sure 6 there's lots of variables that go into the process 7 that....</p> <p>8 Q. So would it surprise you that all of the board 9 members that were deposed stated that the 10 Ferguson-Florissant NEA sent to every single candidate 11 an application for endorsement with a questionnaire and 12 an invitation to come for an interview and some chose 13 to go and some chose not to?</p> <p>14 MS. EBENSTEIN: Sorry. Objection. I don't 15 think they testified on who chose to go and who chose 16 not to. Would they have that information?</p> <p>17 MS. ORMSBY: They individually testified 18 whether they went or didn't.</p> <p>19 MS. EBENSTEIN: Whether they did. Okay. I 20 see.</p> <p>21 A. Was that a question?</p> <p>22 Q. (By Ms. Ormsby) Yeah. Were you aware of 23 that?</p> <p>24 A. No.</p> <p>25 Q. And you didn't look into to what the process</p>	<p style="text-align: right;">Page 72</p> <p>1 A. Right. Yeah. The data on traffic stops are 2 for Ferguson -- municipalities of Ferguson and 3 Florissant, which are partly -- two municipalities that 4 are partly within.</p> <p>5 Q. But we would agree that the 6 Ferguson-Florissant School District doesn't issue any 7 municipal violations, correct?</p> <p>8 A. I think that's right. They're not a municipal 9 government. Yeah.</p> <p>10 On page 11 on the DOJ report, it mentions 11 Ferguson, part of which is in the school district.</p> <p>12 Q. But not the district specifically, correct?</p> <p>13 A. Right.</p> <p>14 Right.</p> <p>15 Q. Okay. Oh, I'm sorry.</p> <p>16 Okay. Let's move on to page 13. So just to be 17 clear, you couldn't find anything specific to the 18 Ferguson-Florissant School District; is that right?</p> <p>19 You mentioned --</p> <p>20 A. -- In the Section 5?</p> <p>21 Q. Yes.</p> <p>22 A. I mentioned some of the areas within the 23 district but not specific to the district.</p> <p>24 Q. Okay. Thank you.</p> <p>25 If you move to page 13, second paragraph, second</p>

<p style="text-align: right;">Page 73</p> <p>1 sentence, you give the number of votes that 2 African-American candidates received; is that right? 3 A. On average? 4 Q. Yes. 5 A. Yeah. Across the eight elections that I 6 studied. 7 Q. And did you rely on precinct level data to 8 obtain that number when you authored this report? 9 A. For that I may have just looked at the 10 districtwide vote totals. Yeah, I was looking at the 11 election totals overall for the district as a whole for 12 each candidate. So I don't think that was based on 13 precinct results. 14 Q. So it's a very general assumption about the 15 district, based on over how many -- how many elections? 16 Eight elections? 17 A. Eight elections. 18 Yeah, I just reported the average number of votes 19 African-American candidates received in those elections 20 and the average number of votes that white candidates 21 received in those elections. 22 Q. But you didn't provide any sort of detailed 23 analysis on those elections and those numbers, right? 24 A. No. I was just reporting those two numbers in 25 that paragraph.</p>	<p style="text-align: right;">Page 75</p> <p>1 A. In which report? 2 Q. I don't know. You just said you took these 3 from Dr. Rodden's numbers and I -- 4 A. -- I took the fact that Dr. Graves was the top 5 choice of African Americans. That I got from 6 Dr. Rodden's report. 7 Q. And did you verify it by counting ballots and 8 votes in this? I'm assuming that's what it is, that 9 five seventeen over seven forty-two? 10 A. That she got five hundred and seventeen votes 11 out of seven hundred and forty-two voters in those 12 precincts. 13 Q. And is that your analysis or is that 14 Dr. Rodden's? 15 A. Yeah, that's my analysis. 16 Q. Okay. 17 A. Yeah. 18 Q. Do you know why Dr. Graves won? 19 A. She got the most votes. 20 Q. Do you think that she did anything specific to 21 assist her in getting the most votes when she ran? 22 A. I can't really say. I didn't have an insight 23 into her campaign or the other campaigns. 24 Q. Did you look at any specific campaigns of any 25 of the candidates?</p>
<p style="text-align: right;">Page 74</p> <p>1 Q. Okay. All right. So you've followed 2 Ferguson-Florissant board elections and written blog 3 posts about them; is that right? 4 A. Right. I think just the one that we discussed 5 already. 6 Q. Okay. And we've already determined -- have 7 you examined information about more than 2014 to 8 determine whether or not there's racial polarized 9 voting in the Ferguson-Florissant School District? 10 A. I did in the rebuttal report. 11 Q. In your rebuttal report? 12 And in your rebuttal report did you find that 13 Dr. Graves' rebuttal report -- I'm looking at page 5. 14 Did you find that Dr. Graves was a candidate of choice 15 for African Americans in 2015? 16 A. I took that from Dr. Rodden's report, that she 17 was the top choice of African-American voters in 2015. 18 Q. So you took that -- this is a homogeneous 19 precinct analysis? 20 A. Right. 21 Q. And you looked at precincts with over eighty 22 percent and over twenty percent. Did Dr. Rodden do 23 that as well? 24 A. In which? 25 Q. I'm looking at --</p>	<p style="text-align: right;">Page 76</p> <p>1 A. No. I just looked at the -- I mean, I looked 2 at the vote totals and the other data that I presented 3 in my reports. 4 Q. You've done research on elections and voter 5 turnout; is that right? 6 A. Some, yes. 7 Q. Okay. And are you aware of any academic 8 research suggesting that white voters respond to 9 racially polarizing events by voting for black 10 candidates? 11 A. By voting for black candidates? 12 Q. Yeah. 13 A. That's not ringing a bell. 14 Q. Are you aware of any academic research on the 15 impact of Voting Rights Act lawsuits on elections? 16 A. The impact of Voting Rights lawsuits on 17 elections. No, I haven't studied that. 18 Q. Do you have any reason to believe that whites 19 strategically voted for Dr. Graves because they wanted 20 to influence this lawsuit? 21 A. I have no idea. 22 Q. Do you have any reason to believe that some 23 candidates decided not to run because of this lawsuit? 24 A. I don't know. 25 Q. Have you -- and do you have any reason to</p>

<p style="text-align: right;">Page 77</p> <p>1 believe that some candidates threw their hat in the 2 ring because they knew about this lawsuit?</p> <p>3 A. No, I don't know. Like I said, that would 4 have been in 2015.</p> <p>5 Q. Yes. And are you aware of any research that 6 suggests that this is behavior that occurs after a 7 Voting Rights Act lawsuit is filed?</p> <p>8 A. I'm not aware of research on that.</p> <p>9 Q. Are you aware of any political science 10 research that says that a VRA lawsuit has an effect on 11 the candidate pool in the next election?</p> <p>12 A. I'm not aware of any research on that.</p> <p>13 Q. Okay. How do you define a minority-preferred 14 candidate?</p> <p>15 A. A minority-preferred candidate, the simplest 16 definition would be the candidate got the most votes 17 from minority voters. The top choice.</p> <p>18 Q. How do we know -- how do we determine 19 minority-preferred candidates in a multiwinner system?</p> <p>20 A. Well, yeah. I mean, there's -- I think that 21 gets trickier. The -- in a multi -- yeah. So then you 22 would want -- the next step would be if it's a three -- 23 if it's a three-seat base, to try and find out which 24 candidate got the second most votes from a 25 particular -- from the minority group and which</p>	<p style="text-align: right;">Page 79</p> <p>1 intervals were so wide that they were statistically 2 indistinguishable from each other.</p> <p>3 Q. I want to take you to one election in 4 particular. And I want to take you to 2013. And in 5 your -- in 2013 you state that Mr. Henson was the top 6 choice of African-American voters; is that right?</p> <p>7 A. Right.</p> <p>8 Q. Okay. And there were -- do you know how many 9 seats were up for election in that?</p> <p>10 A. I believe in -- I think in 2013 there were two 11 seats if I remember correctly.</p> <p>12 Q. I believe that's correct. I might have it. 13 We pulled it out.</p> <p>14 MS. EBENSTEIN: While you're finding that, do 15 you mind if we take a quick bathroom and water break. 16 (Short break.)</p> <p>17 Q. (By Ms. Ormsby) We agree -- okay.</p> <p>18 Okay. So in 2013 you state that Henson is the -- 19 has the -- is the top choice of African-American voters 20 in 2013; is that right?</p> <p>21 A. Yes.</p> <p>22 Q. And then you just stated that it's difficult 23 then to pick who would be the second because of 24 confidence intervals and we're looking at then the 25 ecological inference analysis; is that correct?</p>
<p style="text-align: right;">Page 78</p> <p>1 candidate got the third most votes.</p> <p>2 Q. And did you do that or did you just do the top 3 vote-getter?</p> <p>4 A. In my rebuttal?</p> <p>5 Q. Yes.</p> <p>6 A. In that Table 2 I just looked at the top 7 vote-getter. Elsewhere in my rebuttal report I looked 8 at the other minority-preferred candidates using 9 Rodden's other definition based on how their second and 10 third choices, depending on what election it was.</p> <p>11 Q. And did you determine independently of 12 Dr. Rodden then who you believed to be the second 13 minority-preferred candidate in an election where there 14 were two seats or three, if there were three seats up 15 for election?</p> <p>16 A. I didn't do it independently of Dr. Rodden. I 17 took his estimates from his report.</p> <p>18 Q. Do you disagree with Dr. Rodden's analysis of 19 that?</p> <p>20 A. I think -- where I -- I guess where I'm a 21 little more hesitant to use his report is, in many 22 cases, is in determining the second and third choice of 23 particularly African-American voters in these elections 24 where the vote share looked -- was very, very close 25 among different candidates. And the confidence</p>	<p style="text-align: right;">Page 80</p> <p>1 A. Uh-huh.</p> <p>2 Q. No longer are we looking at homogeneous 3 precinct, right?</p> <p>4 A. Well, we're looking at homogenous precinct in 5 that Table 2.</p> <p>6 Q. In this. But you didn't do homogeneous 7 precinct for any other?</p> <p>8 A. Oh, for the second and third choice?</p> <p>9 Q. Second and third choice, did you?</p> <p>10 A. I don't think I did. I think I just looked at 11 who won.</p> <p>12 Q. Okay.</p> <p>13 A. With the second choice or third choice I 14 didn't do the homogeneous precinct.</p> <p>15 Q. But you're familiar with ecological inference, 16 right?</p> <p>17 A. Yes.</p> <p>18 Q. And I think you already had pulled up the 19 chart on and page 25 of Dr. Rodden's report?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Which that is an ecological inference 22 analysis, correct?</p> <p>23 A. Yeah, those are the results --</p> <p>24 Q. Right.</p> <p>25 A. -- of the ecological inference.</p>

<p style="text-align: right;">Page 81</p> <p>1 Q. So I'll direct you to the 2013 election. And 2 would we agree then that this shows that Mr. Henson 3 absolutely was the top choice for African Americans, 4 correct?</p> <p>5 A. That he got the highest vote share among 6 African -- among all the candidates in 2013 Henson got 7 the highest vote share among African-American voters 8 based on this analysis.</p> <p>9 Q. So he was definitely a minority-preferred 10 candidate, correct?</p> <p>11 A. I would call -- yeah. I mean, I labeled him 12 the top choice for African-American voters.</p> <p>13 Q. But then when we try to decide who the second 14 candidate is, it's difficult because Hogshead and Brown 15 are within each other's confidence intervals, right?</p> <p>16 A. They're pretty close, right.</p> <p>17 Q. So we can agree then that Hogshead and Brown 18 are tied for the second place, correct?</p> <p>19 A. Statistically speaking it's harder to -- well, 20 statistically speaking Henson's confidence intervals 21 overlap with Hogshead and Brown's as well.</p> <p>22 Q. Okay. So the three of them are tied; would 23 you say?</p> <p>24 A. Statistically they're hard to distinguish from 25 each other. I still would call Henson the top choice</p>	<p style="text-align: right;">Page 83</p> <p>1 say the second -- their second minority-preferred 2 candidate was elected; do you agree with that?</p> <p>3 A. In this -- in this case?</p> <p>4 Q. Yes.</p> <p>5 A. I think that's probably correct.</p> <p>6 Q. Okay. And we know that Leslie Hogshead was 7 elected, correct?</p> <p>8 A. Right.</p> <p>9 Q. Okay. So if we look at 2013 we can say that 10 Ms. Hogshead is a minority-preferred candidate and she 11 was elected, correct?</p> <p>12 A. This is using Rodden's second -- his measure 13 of minority-preferred candidates. Here it's harder to 14 tell the difference between Hogshead and Brown as to 15 who was the second choice.</p> <p>16 Q. Well, I think we agreed they were tied, 17 correct? I mean statistically tied?</p> <p>18 A. Statistically similar, yeah.</p> <p>19 Q. So if they're tied and one of them wins, then 20 they --</p> <p>21 A. -- Well, they're tied based on the evidence we 22 can see. I mean, it may have been that Brown got more 23 votes among African-American voters than Hogshead if we 24 had had the individual level data --</p> <p>25 Q. -- And actually -- okay.</p>
<p style="text-align: right;">Page 82</p> <p>1 among African-American voters.</p> <p>2 Q. And wouldn't you say that too because his -- I 3 forgot what they call it. The point is -- the actual 4 midpoint is outside of both Hogshead's and Brown's 5 confidence level; isn't that right?</p> <p>6 A. Yeah, I think so. It's hard to tell compared 7 to Hogshead. But for a more precise answer, you 8 probably want to do a separate statistical test to see 9 if the difference between the two candidates is 10 statistically different or not.</p> <p>11 Q. Okay. Can we agree though that Brown and 12 Hogshead are statistically tied?</p> <p>13 A. Right.</p> <p>14 Q. There's no --</p> <p>15 A. -- They're very similar statistically.</p> <p>16 Q. Yeah. So my -- so we know that Henson did not 17 win the election so the minority-preferred candidate 18 did not win; is that correct?</p> <p>19 A. In 2013.</p> <p>20 Q. Yes.</p> <p>21 A. Right.</p> <p>22 Q. And if we say that Hogshead and Brown are 23 tied, if either one of them won then they would be -- 24 they are tied for the second place minority-preferred 25 candidate. So if either one of them won, then we can</p>	<p style="text-align: right;">Page 84</p> <p>1 Okay. So we agree though that Ms. Hogshead was 2 elected?</p> <p>3 A. Yeah.</p> <p>4 Q. Okay. And we agree that in 2014 Dr. Thurman 5 was the top choice of African-American voters, correct?</p> <p>6 A. In 2014?</p> <p>7 Q. Yes.</p> <p>8 A. Right. Although her -- hers -- hers was not 9 too far off from Savala and Johnson. Well, I mean, the 10 confidence interval.</p> <p>11 Q. And actually another of the experts of the 12 Plaintiffs named all three of those African-American 13 choices for that election -- or minority-preferred 14 candidate elections. He chose three. Of Plaintiffs. 15 So we can say --</p> <p>16 A. -- Yeah, 'cause they're -- I'm sorry.</p> <p>17 Q. Go ahead. You go.</p> <p>18 A. Their three -- the three confidence intervals 19 for Paulette, Savala, and Johnson among the 20 African-American voters are clearly higher than the 21 confidence intervals for the other candidates among 22 African-American voters.</p> <p>23 Q. So we can say they're tied for first more or 24 less, correct? There's no statistical difference?</p> <p>25 A. They're similar. Yeah, the point estimate has</p>

<p style="text-align: right;">Page 85</p> <p>1 Paulette being the most -- the one who got the most 2 votes among African Americans. 3 Q. And so we agree that she was one of the 4 African-Americans preferred candidates, do we not? One 5 of the -- they got three votes that year? 6 A. Uh-huh. 7 Q. And she was elected; is that right? 8 A. She was elected. 9 Q. And in 2015, I don't think there's a doubt in 10 the world that Dr. Graves was the top choice of African 11 Americans, correct? 12 A. Right. Uh-huh. 13 Q. And she was elected? 14 A. Yes. 15 Q. Okay. So in your expert opinion do you 16 believe African Americans did not have the opportunity 17 to elect candidates of their choosing in the elections 18 between 2011 and 2015? 19 A. Sorry. Say that again. Do I believe? 20 Q. I'm just going to -- I'm going to change that 21 question to say, In your opinion, in your expert 22 opinion, do you believe African Americans did not have 23 the opportunity to elect candidates of their choosing 24 in elections? We just talked about '13, '14, '15. How 25 about '11 and '12, were they able to elect their</p>	<p style="text-align: right;">Page 87</p> <p>1 choice of African-American voters. 2 Q. So you say that Dr. Graham was the 3 minority-preferred candidate in 2011; is that right? 4 A. That's what I got from Rodden's report. 5 Q. And you agree with that? 6 A. That was the top one, or she was pretty close 7 to Hawkins. But the number was slightly higher so -- 8 for Graham so. 9 Q. And Dr. Graham lost by a small number of 10 votes; is that right? 11 A. Right. I can't remember how many votes but. 12 Q. So is it your testimony that even though her 13 margin of loss was rather narrow, the at-large system 14 diluted African Americans' ability to elect her? 15 A. I think -- I think the at-large system was a 16 factor, a contributing factor. 17 Q. Are you done? I don't want to interrupt. 18 A. The -- yeah, we're talking about 2011? 19 Q. Yes. 20 A. Since white voters tended to support other -- 21 other candidates more than her. 22 Q. Are you aware that Dr. Graham served on the 23 Ferguson-Florissant board for twenty-two years and was 24 reelected several times? 25 A. I knew she was on the board a long time and</p>
<p style="text-align: right;">Page 86</p> <p>1 candidates of choice in '11 and '12? 2 A. In 2012 the top choice among African Americans 3 was Morris. She lost. 2011, I had Graham as the top 4 choice among African-American voters. She lost. 5 Q. So my question is, Did the African Americans, 6 did they not have the opportunity to elect either of 7 those individuals? 8 A. I guess I would say in those elections 9 African-American voters didn't have as much success in 10 electing their candidates of choice as did white 11 voters. 12 Q. And why do you think that they didn't have 13 that success? 14 A. Because in each of those elections the top 15 choice among African-American voters was a different 16 candidate than the top choice among white voters, and 17 the top choice among white voters won each of those 18 elections but the top choice among black voters didn't 19 win in each of those elections. 20 Q. Do you believe that the white voters in those 21 two elections blocked African Americans from being able 22 to elect their candidates of choice? 23 A. I don't know that I would use -- well, I guess 24 the way I would say it is that in those elections white 25 voters tended to vote for somebody else than the top</p>	<p style="text-align: right;">Page 88</p> <p>1 had been reelected in the past. 2 Q. So the at-large system did not dilute 3 African-Americans' ability to elect her in previous 4 elections; is that right? 5 A. Her specifically, no. 6 Q. And is it your opinion that African Americans 7 did not have the ability to elect Charles Henson in 8 2013? 9 A. He was the -- he was the top -- he was the top 10 choice among African-American voters in 2013, but he 11 lost because white voters tended to vote for other 12 candidates more heavily than for him in part. 13 Q. Would you agree that some African-American 14 voters chose to vote for someone other than him as 15 well? 16 A. Right. 17 Q. And that would -- 18 A. -- The evidence suggests that, yeah. 19 Q. And that would be true for Dr. Graham as well 20 in 2011? 21 A. That there were some African-American voters 22 who did not vote for her? That's entirely possible, 23 yeah. 24 Q. Okay. And are you aware that Mr. Henson lost 25 by a hundred and twenty-five votes in 2013?</p>

<p style="text-align: right;">Page 89</p> <p>1 A. I didn't know the exact number but I remember 2 it being fairly close.</p> <p>3 Q. And are you aware that he served on the board 4 for seven years prior to that?</p> <p>5 A. I knew he had been on the board for, yeah, a 6 couple terms.</p> <p>7 Q. Okay. And so it's still your contention that 8 the at-large system diluted the African-Americans' 9 ability to elect him?</p> <p>10 A. Yes.</p> <p>11 Q. But you agree if more African Americans would 12 have voted for him, he could have won the election, 13 correct?</p> <p>14 A. Instead of voting for somebody else?</p> <p>15 Q. Somebody else.</p> <p>16 A. Theoretically, yes.</p> <p>17 Q. Okay. You do a lot of research using census 18 data; is that correct?</p> <p>19 A. Some research, yes, using census data.</p> <p>20 Q. And do you ever study things like poverty and 21 income?</p> <p>22 A. Sometimes.</p> <p>23 Q. And when you do that do you use the American 24 Community Survey?</p> <p>25 A. More recently, yes. Since the census got rid</p>	<p style="text-align: right;">Page 91</p> <p>1 A. Right. Although they say -- also say choosing 2 which data set involves more than simply considering 3 the population size in your area. You must think about 4 the balance between currency and sample size, 5 reliability, precision.</p> <p>6 Q. All right. Thank you.</p> <p>7 Q. Okay. Have you been asked to form any opinion on 8 any subject that is not included already in your two 9 submitted reports?</p> <p>10 A. Have I been asked to?</p> <p>11 Q. Have you been asked by Plaintiffs' counsel 12 to --</p> <p>13 A. Oh.</p> <p>14 Q. -- form any opinion on any subject that's not 15 already in your two reports?</p> <p>16 A. No.</p> <p>17 Q. And have you been asked or do you plan to do 18 any additional work between now and trial as of today?</p> <p>19 A. I hadn't thought about it.</p> <p>20 Q. As of today.</p> <p>21 A. As of today, no.</p> <p>22 Q. Okay.</p> <p>23 A. If I'm asked, I'll do more.</p> <p>24 MS. ORMSBY: I don't have any other questions.</p> <p>25 MS. EBENSTEIN: If we could go off the record</p>
<p style="text-align: right;">Page 90</p> <p>1 of the long form.</p> <p>2 Q. And do you believe when you use the ACS, that 3 that's a reliable source of data?</p> <p>4 A. For certain things. For measuring income and 5 poverty, I think you said. For larger jurisdictions I 6 think it's pretty reliable. It's more difficult -- or 7 there's more uncertainties using the ACS data for 8 smaller jurisdiction.</p> <p>9 Q. And you -- that -- and I can show you the form 10 if you want me to. But would you agree that the Census 11 Bureau states it is appropriate to use the three-year 12 ACS to study geographic entities that are above twenty 13 thousand? Do you know?</p> <p>14 A. That may be the case.</p> <p>15 Q. I'll show you.</p> <p>16 A. I know there's the five-year averages as well 17 that the census provides.</p> <p>18 Q. I'm showing you what's been previously marked 19 as Exhibit C. And under the three-year estimates, 20 what's the geographic -- the size of a geographic 21 entity that's appropriate to use the three-year ACS?</p> <p>22 A. Yeah. The table says data for areas with 23 populations of twenty thousand plus.</p> <p>24 Q. Okay. And that's information provided by the 25 Census Bureau?</p>	<p style="text-align: right;">Page 92</p> <p>1 and just have five minutes to confer between the two of 2 us.</p> <p>3 (Short break.)</p> <p>4 CROSS-EXAMINATION</p> <p>5 BY MS. LAKIN:</p> <p>6 Q. Dr. Kimball, if you wouldn't mind turning to 7 Exhibit 4. It's Dr. Rodden's initial report and turn 8 to page 20.</p> <p>9 A. Okay.</p> <p>10 Q. And I just wanted to ask you a question about 11 these scatter plots.</p> <p>12 A. Uh-huh.</p> <p>13 Q. And before making any conclusions from these 14 scatter plots, wouldn't you want to know some other 15 information, such as the number of candidates there 16 were or how many black candidates or how many white 17 candidates?</p> <p>18 A. Yeah, that would be helpful to know.</p> <p>19 Q. Is there any other information that you would 20 find useful before you tried to interpret this data?</p> <p>21 A. That would be good to know how many candidates 22 of each race were running. It would be helpful to know 23 how many voters were in each of the precincts as well.</p> <p>24 Q. Would it also be helpful to know -- to see if 25 there's an analysis done with white VAP share?</p>

<p style="text-align: right;">Page 93</p> <p>1 A. Sure. Yeah. It might not -- might not be 2 entirely symmetrical to the African-American VAP share 3 data but to see if it's a similar -- yeah, a similar 4 pattern in reverse.</p> <p>5 Q. I'd like you to take a look at your report, 6 which is Exhibit R. And turn to page -- I have the 7 wrong page.</p> <p>8 I guess if you turn to page 5 of your report?</p> <p>9 A. Okay.</p> <p>10 Q. I just want to ask you a general question 11 about your homogeneous precinct analysis.</p> <p>12 A. Uh-huh.</p> <p>13 Q. When you use the word integrated when you're 14 referring to -- you are referring to the districts or 15 precincts in which there are less than eighty percent 16 or more than twenty percent African American 17 population, you are not referring to the lived 18 integration experience, for instance, integrated 19 schools, churches, etc., is that correct?</p> <p>20 A. Right. It's just the voting age population.</p> <p>21 Q. If you turn back to -- I don't know if you 22 need to turn to this but it might be useful. Back to 23 Exhibit 4. And go to the page 25. We were talking a 24 little bit before about the 2013 election.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 95</p> <p>1 Could it be that neither Henson nor -- sorry. 2 Brown nor Hogshead was preferred; in other words, that, 3 for instance, black voters cast their ballots evenly 4 between the two?</p> <p>5 A. I suppose that's possible. That if Henson was 6 their first choice and then if the other choices 7 weren't that appealing, they had to vote for somebody I 8 suppose.</p> <p>9 Q. Is it possible in your view of what 10 constitutes a minority-preferred candidate that if 11 there are two seats available that there must be two 12 preferred candidates?</p> <p>13 A. Not necessarily.</p> <p>14 Q. Just one last question for me and I think 15 Ms. Ebenstein has some questions.</p> <p>16 But are you -- were you aware -- are you aware 17 that Chuck Henson -- I know that you are aware that he 18 was on the board for many years. Are you aware that he 19 never faced a challenger when he was up for reelection 20 until he lost in 2015?</p> <p>21 A. Right. Because his name didn't appear as a 22 candidate in previous -- previous elections I believe.</p> <p>23 MS. LAKIN: Thank you.</p> <p>24 CROSS-EXAMINATION</p> <p>25 BY MS. EBENSTEIN:</p>
<p style="text-align: right;">Page 94</p> <p>1 Q. You recall?</p> <p>2 A. Uh-huh.</p> <p>3 Q. And you had identified that Henson was the 4 clear minority-preferred candidate in this election; is 5 that right?</p> <p>6 A. Right. In my rebuttal report I have him as 7 the top choice among African-American voters in 2013.</p> <p>8 Q. And then we had discussed -- and you had 9 discussed with Ms. Ormsby that as between the remaining 10 two candidates Hogshead --</p> <p>11 A. Uh-huh.</p> <p>12 Q. -- and Brown, that we couldn't determine to a 13 high level of statistical significance which candidate 14 was preferred; is that correct?</p> <p>15 A. The difference between Hogshead and Brown?</p> <p>16 Q. Is that correct?</p> <p>17 A. Right. They're statistically 18 indistinguishable.</p> <p>19 Q. And could it be that neither Hogshead nor 20 Brown was preferred by the African-American voters -- (Interruption.)</p> <p>22 MS. ORMSBY: Go off the record.</p> <p>23 (Off the record.)</p> <p>24 Q. (By Ms. Lakin) So just to -- I think I was in 25 the middle of a question.</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. Just one additional question.</p> <p>2 If you could go to page 6 of your report.</p> <p>3 A. Of my initial report?</p> <p>4 Q. Yes, your initial report.</p> <p>5 In the first full paragraph on page 6 that starts 6 with seats on the Ferguson-Florissant school board?</p> <p>7 A. Yes.</p> <p>8 Q. You refer to a previous research finding that 9 racial and ethnic minority voters have had more 10 difficulty electing candidates of their choice in local 11 at-large elections than in the local district 12 elections. When you say voters there?</p> <p>13 A. Uh-huh.</p> <p>14 Q. Do you understand that to mean either the 15 voting age population or registered voters but not the 16 entire population?</p> <p>17 A. Right. Yeah. Voters meaning adults of voting 18 age population.</p> <p>19 Q. So it wouldn't matter how many five-year-olds, 20 ten-year-olds, young children there were in a district, 21 the relevant statistic that you're referring to or the 22 literature you're referring to?</p> <p>23 A. Right, it refers to vote, yeah. Voting 24 adults.</p> <p>25 Q. Okay. In the next paragraph, when you speak</p>

<p style="text-align: right;">Page 97</p> <p>1 to the -- that literature finds that turnout among 2 African-American voters tends to be disproportionately 3 low in off-cycle local elections?</p> <p>4 A. Yes.</p> <p>5 Q. Defense counsel asked you and you affirmed 6 that that was not a statement specific to 7 Ferguson-Florissant School District or based on 8 original research for this report; however, would you 9 be surprised to find out that the African-American 10 turnout along with the white turnout is higher in 11 November elections than in April elections?</p> <p>12 A. Right, that's pretty common.</p> <p>13 Q. Is that consistent --</p> <p>14 A. Yeah.</p> <p>15 Q. -- with research that you've read on the 16 topic?</p> <p>17 A. Yes. Uh-huh.</p> <p>18 MS. EBENSTEIN: Those are all the questions 19 that we have.</p> <p>20 REDIRECT EXAMINATION</p> <p>21 BY MS. ORMSBY:</p> <p>22 Q. So I'll start at the last question and then 23 move backwards. Is that okay with you?</p> <p>24 A. Sure.</p> <p>25 Q. Have you done any specific research on voter</p>	<p style="text-align: right;">Page 99</p> <p>1 candidates sought an endorsement, how those numbers 2 played out?</p> <p>3 A. On the endorsement side --</p> <p>4 Q. -- And to clarify, when I say labor 5 endorsements I'm including NEA and North County Labor.</p> <p>6 A. Sure. Sure.</p> <p>7 Yeah, on the endorsement side, I didn't examine 8 the process. I took the process as given and said 9 let's look at what the outcome of that process is.</p> <p>10 Q. But do you believe that it would have been -- 11 or it's helpful for the reader to have that information 12 in order to come to a proper conclusion?</p> <p>13 A. I guess I'll leave that to readers to decide.</p> <p>14 Q. You don't -- I think you testified earlier 15 that the way it's written now could be misleading?</p> <p>16 A. The way what's written?</p> <p>17 Q. The way your report is written now with regard 18 to endorsements. Well, maybe you didn't say that.</p> <p>19 A. I didn't say that it's misleading.</p> <p>20 Q. And you don't believe it is misleading?</p> <p>21 A. No. I just provided the numbers on which 22 candidates were endorsed and which candidates were not 23 endorsed.</p> <p>24 Q. Without any consideration who wanted their 25 endorsement?</p>
<p style="text-align: right;">Page 98</p> <p>1 turnout in Ferguson-Florissant within the 2 Ferguson-Florissant School District boundaries for 3 months other than April?</p> <p>4 A. No.</p> <p>5 Q. Do you believe it's important to know the 6 number of black and white candidates before 7 interpreting any data with regard to this case?</p> <p>8 A. Not any data. I mean, I think for under -- 9 not for all aspects. I think it's important for 10 studying racially-polarized voting specifically.</p> <p>11 Q. Why is it helpful?</p> <p>12 A. To know -- well, knowing who's running -- I 13 think, for example, in 2014 the fact that there were 14 three African-American candidates running as a 15 coalition is useful to know. If there are -- knowing 16 how many seats are up in the election and how many 17 candidates of each race are running is useful to know.</p> <p>18 Q. Do you think it's helpful in order for the 19 reader or for the court to gain a perspective when they 20 have that information?</p> <p>21 A. Sure.</p> <p>22 Q. But you didn't think it was important to 23 provide that information when you were looking at labor 24 endorsements? Whether or not specifically black 25 candidates sought an endorsement, whether white</p>	<p style="text-align: right;">Page 100</p> <p>1 A. Yeah. I didn't examine the -- how the 2 endorsement process works. I took the process as given 3 and said let's look at the results of that process.</p> <p>4 Q. But your conclusion was, however, that whites 5 received the endorsement more often than African 6 Americans?</p> <p>7 A. Yes.</p> <p>8 Q. Without even determining whether or not 9 African-American candidates wanted or even asked for 10 the endorsement; isn't that right?</p> <p>11 A. I reported that whites more frequently -- 12 white candidates more frequently received endorsements 13 than African-American candidates.</p> <p>14 Q. But you didn't answer my question. You didn't 15 determine whether or not all candidates, including 16 African Americans, even wanted or sought the 17 endorsement, you just reported the numbers; is that 18 right?</p> <p>19 A. I reported who got the endorsement. I didn't 20 investigate who sought an endorsement.</p> <p>21 Q. And that could lead to a misleading conclusion 22 without providing that information?</p> <p>23 MS. EBENSTEIN: That's been asked and 24 answered. Unless there's another question in that 25 statement.</p>

Page 101	Page 103
1 Q. (By Ms. Ormsby) You can go ahead and answer.	1 A. There are reasons.
2 MS. EBENSTEIN: The question? It was	2 Yeah.
3 statement. It wasn't a question. If there's a	3 MS. ORMSBY: Okay. I don't have anything
4 question --	4 further.
5 MS. ORMSBY: -- There was a question.	5 MS. EBENSTEIN: I have one additional
6 A. What was the question?	6 question.
7 Q. (By Ms. Ormsby) Do you not believe that that	7 RECROSS-EXAMINATION
8 could lead to an inaccurate conclusion for the reader	8 BY MS. EBENSTEIN:
9 if they don't have all of that information?	9 Q. Mr. Kimball, I believe you made this quite
10 A. I mean, I think the report speaks for itself.	10 clear that you did not investigate which candidates
11 You know, I took the process as given and said let's	11 sought endorsement either from unions or from the
12 look at what the outcome of that process is.	12 FFNEA. Do you have any reason to believe that fewer
13 Q. Does your report speak for itself? Do you	13 African-American candidates who ran for office sought
14 tell the reader that you did not find out whether or	14 the endorsements?
15 not a candidate wanted the endorsement? Did you tell	15 A. No, 'cause I didn't investigate that.
16 them that? Does the reader know that?	16 MS. EBENSTEIN: Those are all the questions I
17 A. No, I didn't state that in the report.	17 have.
18 Q. Would it have been more accurate if you would	18 MS. ORMSBY: I have nothing further.
19 have said nine out of ten candidates who sought the	19
20 endorsement of the NEA received it or didn't receive	20
21 it? Could those words have made your report a little	21
22 bit more clear?	22
23 MS. EBENSTEIN: Objection. Asked and answered	23
24 a few times.	24
25 A. Yeah, I thought I answered this. I guess I'll	25
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1 leave it to others to judge.	1 MCGRAW REPORTING, L.L.C.
2 Q. (By Ms. Ormsby) Okay.	2 Certified Court Reporter
3 A. Reach your own conclusions on that.	2 2927 Droste Road
4 Q. All right. You were asked a question about	3 St. Charles, MO 63301
5 whether or not Mr. Henson had ever faced election	4 314.704.2727
6 prior; is that right?	5
7 A. Right.	6 August 24, 2015
8 Q. And as a political scientist, when you look at	7
9 elections where incumbents are not challenged when	8 American Civil Liberties Union
10 they're up for reelection, what is your conclusion with	8 Ms. Julie A. Ebenstein
11 regard to that?	9 125 Broad Street, 18th Floor
12 Let me ask it another way. Is it an indication	9 New York, New York 10004-2400
13 when nobody files against incumbents that generally the	10
14 constituents are content with the representation that	11 In re: Deposition of David Kimball
15 they're getting?	11 NAACP, et al vs. Ferguson-Florissant
16 A. That's one possible explanation.	12
17 MS. ORMSBY: I don't have any further	13 Dear Ms. Ebenstein,
18 questions. Thank you.	14 Enclosed please find your copy of the transcript,
19 MS. LAKIN: Were you finished with your	15 the original signature page, and the errata sheets for
20 answer?	16 the deposition of Dr. Kimball. Please have him read
21 MS. ORMSBY: Oh, I'm sorry.	17 the transcript, make any necessary corrections on the
22 A. It's possible that there are other -- there	18 errata sheets, and sign the original signature page and
23 are other possible explanations. Maybe nobody was	19 the errata sheets in front of a notary public.
24 interested to run.	20
25 MS. ORMSBY: Are you done?	21 Please send the signed and notarized signature

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